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Investigation
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MEMORANDUM TO: Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

FROM: James Maeder
Senior Director
performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Determination and Preliminary Affirmative Determination of Critical Circumstances, In Part, in the Countervailing Duty (CVD) Investigation of Biodiesel from the Republic of Argentina

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I. SUMMARY

The Department of Commerce (the Department) preliminarily determines that countervailable subsidies are being provided to producers and exporters of biodiesel from the Republic of Argentina (Argentina), as provided in section 703 of the Tariff Act of 1930, as amended (the Act).

II. BACKGROUND

A. Initiation and Case History

On March 23, 2017, antidumping duty (AD) and countervailing duty (CVD) petitions regarding imports of biodiesel from Argentina were properly filed with the Department by the National

Biodiesel Board Fair Trade Coalition and its individual members (collectively, the petitioner).[1] Supplements to the Petition and our consultations with the Government of Argentina (GOA) are described in the *Initiation Notice* and accompanying Initiation Checklist.[2] On April 12, 2017, the Department initiated a CVD investigation of biodiesel from Argentina.[3]

We stated in the *Initiation Notice* that we intended to base our selection of mandatory respondents on U.S. Customs and Border Protection (CBP) entry data for the Harmonized Tariff Schedule of the United States (HTSUS) subheadings listed in the scope of the investigation. We released the CBP entry data under administrative protective order (APO) on April 14, 2017.[4] The Department received comments from exporter/producer Vicentin S.A.I.C. (Vicentin) on April 21, 2017.[5] The Department received rebuttal comments from the petitioner on April 26, 2017.[6] Section 777A(e)(1) of the Act directs the Department to determine an individual countervailable subsidy rate for each known exporter/producer of subject merchandise. The Department, however, may limit its examination to a reasonable number of exporters/producers under section 777A(e)(2) of the Act and 19 CFR 351.204(c)(2) if it determines that it is not practicable to determine individual countervailable subsidy rates because of the large number of exporters/producers involved in the investigation.

The Department determined that, in this investigation, it was not practicable to examine all of the exporters/producers of biodiesel from Argentina because of the large number of identified exporters/producers relative to the resources available to the Department to conduct this investigation.[7] Based upon CBP entry data, the Department selected the two exporters/producers accounting for the largest volume of subject merchandise exported to the United States from Argentina during the period of investigation (POI): LDC Argentina S.A. (LDC Argentina) and Vicentin.[8] On May 10, 2017, we issued the CVD questionnaire to the GOA, requesting that it forward this questionnaire to the selected mandatory respondents, and, along with the mandatory respondents, provide information regarding the subsidy programs alleged in the Petition.[9] On

[1] *See* "Biodiesel from Argentina and Indonesia; Antidumping and Countervailing Duty Petitions," dated March 23, 2017 (Petition). Information concerning the individual members of the National Biodiesel Board Fair Trade Coalition is business proprietary information. *See* Petition at Vol I, 3-4.
[2] *See* Biodiesel from Argentina and Indonesia, Initiation of Countervailing Duty Investigations, 82 FR 18423 (April 19, 2017) (*Initiation Notice*), and accompanying Initiation Checklist.
[3] *See Initiation Notice*.
[4] *See* Memorandum, "Release of Customs Entry Data for Respondent Selection in the Countervailing Duty Investigation of Biodiesel from Argentina," dated April 14, 2017 (CBP Entry Data Memorandum).
[5] *See* Vicentin Letter, "Vicentin Comments on Customs Data and Mandatory Respondent Selection Biodiesel from Argentina," dated April 21, 2017 (Vicentin's CBP Comments).
[6] *See* Petitioner Letter, "Biodiesel from Argentina: Rebuttal Comments on Customs Data and Respondent Selection," dated April 26, 2017 (Petitioner's CBP Comments).
[7] *See* Memorandum, "Countervailing Duty Investigation of Biodiesel from Argentina: Respondent Selection," dated May 3, 2017 (Respondent Selection Memo) at 2-3.
[8] *Id.* at 3-6.
[9] *See* Department Letter re: Countervailing Duty Questionnaire, dated May 10, 2017 (Initial CVD Questionnaire).

May 26, 2017, and May 30, 2017, we received timely affiliation questionnaire responses from LDC Argentina and Vicentin, respectively.[10] LDC Argentina and Vicentin filed supplemental affiliation responses on June 13, 2017 and June 16, 2017, respectively.[11] Based on the information provided in LDC Argentina's and Vicentin's affiliation questionnaire response, and the petitioner's comments on LDC Argentina's affiliation responses, the Department requested that LDC Argentina provide a full questionnaire response on behalf of three affiliates, LDC Semillas S.A. (LDC Semillas), Semillas del Rosario (Rosario), and a third company[12] (LDC Argentina, et al.),[13] and that Vicentin provide a full questionnaire response on behalf of five affiliates, Oleaginosa San Lorenzo S.A., Sir Cotton S.A., Los Amores S.A., Renova S.A. (Vicentin, et al.),[14] and unaffiliated toller, Patagonia Bioenergia S.A.[15]

Between June 30, 2017, and August 13, 2017, we received questionnaire responses from the GOA, LDC Argentina, *et al.*, and Vicentin, *et al*.[16] The petitioner filed comments on these responses between July 11, 2017, and July 17, 2017.[17] Pre-preliminary comments were filed by the petitioner on August 9, 2017,[18] and by the GOA on August 10, 2017.[19] On August 11, 2017,

[10] *See* LDC Argentina's May 26, 2017 Affiliation Response (LDC Argentina AFFR), and Vicentin's May 30, 2017 Affiliation Response (Vicentin May 30, 2017 AFFR).
[11] *See* LDC Argentina's June 13, 2017 Supplemental Affiliation Response (LDC Argentina June 13, 2017 SAFFR), and Vicentin's June 16, 2017 Supplemental Affiliation Response (Vicentin June 16, 2017 SAFFR).
[12] The name of this company is business proprietary information.
[13] For information about affiliation and cross-ownership *see* "Attribution of Subsidies" section below.
[14] For information about affiliation and cross-ownership *see* "Attribution of Subsidies" section below.
[15] *See* Department Letter, "Request for Countervailing Duty Questionnaire Responses Pertaining to Additional Companies," dated June 7, 2017 and June 29, 2017 (DOC's June 7 and June 29, 2017 Request Re LDC); Department Letter re: Request for Countervailing Duty Questionnaire Responses Pertaining to Additional Companies," dated June 7, 2017 (DOC's June 7, 2017 Request Re Vicentin); and Petitioner Letter, "Comments on LDC Argentina S.A.'s Supplemental Affiliation Questionnaire Response," dated June 23, 2017.
[16] *See* GOA's June 30, 2017 Initial Questionnaire Response (GOA June 30, 2017 IQR); GOA's July 10, 2017 Affiliate Addendum to the Initial Questionnaire Response (GOA July 10, 2017 IQR); GOA July 14, 2017 Correction to the Initial Questionnaire Response (GOA July 14, 2017 IQR-3); GOA's August 10, 2017 First Supplemental Questionnaire Response (GOA August 10, 2017 SQR); GOA's August 13, 2017 Second Supplemental Questionnaire Response (GOA August 13, 2017 SQR); LDC Argentina's June 29, 2017 Initial Questionnaire Response (LDC Argentina June 29, 2017 IQR); LDC Argentina's July 11, 2017 Affiliate Addendum to the Initial Questionnaire Response (LDC Argentina's July 11, 2017 IQR); LDC Argentina's August 2, 2017 First Supplemental Questionnaire Response (LDC Argentina August 2, 2017 SQR); LDC Argentina's August 7, 2017 Second Supplemental Questionnaire Response (LDC Argentina August 8, 2017 SQR); Vicentin's June 30, 2017 Initial Questionnaire Response (Vicentin June 30, 2017 IQR); Vicentin's July 6, 2017 Correction to the Initial Questionnaire Response (Vicentin July 6, 2017 IQR); Vicentin's August 3, 2017 First Supplemental Questionnaire Response (Vicentin August 3, 2017 SQR); and Vicentin's August 9, 2017 Second Supplemental Questionnaire Response (Vicentin August 9, 2017 SQR).
[17] *See* Petitioner Letter, "Comments on the Responses of Vicentin, LDC, and the Government of Argentina to the Department's Initial Questionnaire," dated July 11, 2017. *See* Petitioner Letter, "Comments on the Government of Argentina's Initial Questionnaire Response and Errata," dated July 17, 2017.
[18] *See* Petitioner Letter, "Pre-Preliminarily Comments," dated August 9, 2017.
[19] *See* GOA Letter, "Pre-Prelim Comments," dated August 10, 2017.

Department officials met with representatives of the petitioner, at their request.[20] On August 14, 2017, the petitioner filed proposed calculations regarding the provision of soybeans for less than adequate remuneration (LTAR).[21] On August 16, 2017, LDC Argentina filed a response to the petitioner's proposed calculations.[22] Both LDC Argentina and Vicentin submitted publicly-ranged sales data on August 16, 2017, and August 17, 2017, respectively.[23]

On July 10, 2017, the petitioner filed an allegation of critical circumstances with respect to subsidized imports of biodiesel from Argentina.[24]

The petitioner filed a request to extend the deadline for filing new subsidy allegations on July 11, 2017, and the Department extended the deadline on July 12, 2017.[25] On July 24, 2017, the petitioner timely filed new subsidy allegations for this investigation and requested that the Department initiate an investigation on five additional programs.[26] The Department initiated an investigation on these five programs concurrent to this preliminary determination.[27]

B. Postponement of Preliminary Determination

On June 5, 2017, based on a request from the petitioner, the Department postponed the deadline for the preliminary determination for the full 130 days as permitted under sections 703(c)(1) and 703(2) of the Act, and 19 CFR 351.205(f)(1).[28]

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[20] *See* Memorandum, "Ex-Parte Meeting" dated August 14, 2017.
[21] *See* Petitioner Letter, "Proposed Calculation of the *Ad Valorem* Countervailable Subsidy Rate for Less Than Adequate Remuneration," dated August 14, 2017.
[22] *See* LDC Argentina Letter, "Response to the Petitioner's Proposed Calculation of the Ad Valorem Countervailing Subsidy Rate for Soybeans for Less Than Adequate Remuneration" dated August 16, 2017.
[23] *See* LDC Argentina Letter, "Public Versions of Exhibits Containing Sales Information" dated August 16, 2017. *See* Vicentin Letter, "Submission of Public Ranges Sales Values" dated August 17, 2017.
[24] *See* Petitioner Letter, "Critical Circumstances Allegation," dated July 12, 2017.
[25] *See* Petitioner Letter, "Request for Extension of the Deadline for New Subsidy Allegations," dated July 11, 2017, and Department Letter, "Extension of Deadline for Submitting New Subsidy Allegation," dated July 12, 2017.
[26] *See* Petitioner Letter, "New Subsidy Allegations," dated July 24, 2017. The alleged subsidies were Reintegro, Convergence Factor, Pacto Fiscal, and the Province of Santiago del Estero System of Promotion and Industrial Development: Ten Year Partial Exemption from Turnover Tax. These programs were identified in the initial questionnaire responses. The Department requested additional information from the respondents and the GOA in supplemental questionnaires issued to Vicentin on July 19, 2017, LDC Argentina on July 19, 2017, and the GOA on July 25, 2017.
[27] *See* Memorandum, "New Subsidies Allegation," dated concurrently with this memorandum.
[28] *See Biodiesel from Argentina and Indonesia, Postponement of Preliminary Determinations of Countervailing Duty Investigations*, 82 FR 25773 (June 5, 2017). The actual due date falls on August 20, 2017, which is a Sunday. The Department's practice dictates that where a deadline falls on a weekend or federal holiday, the appropriate deadline is the next business day. *See Notice of Clarification: Application of ``Next Business Day'' Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended*, 70 FR 24533 (May 10, 2005).

C. Period of Investigation

The POI is January 1, 2016, through December 31, 2016. This period corresponds to the most recently completed calendar year in accordance with 19 CFR 351.204(b)(2).

III. SCOPE COMMENTS

As noted in the *Preliminary Determination*,[29] in accordance with the preamble to the Department's regulations,[30] we set aside a period of time for parties to raise issues regarding product coverage and encouraged all parties to submit comments within 20 calendar days from the signature date of the *Initiation Notice*.[31] We did not receive any comments concerning the scope of this investigation.

IV. SCOPE OF THE INVESTIGATION

The product covered by this investigation is biodiesel from Argentina.[32]

V. INJURY TEST

Because Argentina is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Act, the U.S. International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from Argentina materially injure, or threaten material injury to, a U.S. industry. On May 12, 2017, the ITC determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of biodiesel from, *inter alia*, Argentina.[33]

VI. PRELIMINARY DETERMINATION OF CRITICAL CIRCUMSTANCES

As noted above, the Department received a timely allegation that critical circumstances exist with respect to imports of the subject merchandise on July 10, 2017. Based on information

[29] *See Biodiesel from the Republic of Argentina: Preliminary Affirmative Countervailing Duty Determination and Preliminary Affirmative Critical Circumstances, In Part* (signed August 21, 2017) (Preliminary Determination).
[30] *See Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997).
[31] *See Initiation Notice*, 82 FR at 18424.
[32] For a full description of the scope of this investigation, *see* Appendix I to the *Federal Register* notice that accompanies this memorandum.
[33] *See Biodiesel from Argentina and Indonesia; Determinations*, 82 FR 22155 (May 12, 2017).

provided by the petitioner,[34] data collected by the Department,[35] and data placed on the record of this investigation by mandatory respondents LDC Argentina and Vicentin,[36] the Department preliminarily determines that critical circumstances exist with respect to imports of biodiesel from Argentina.

Section 703(e)(1) of the Act provides that the Department will preliminarily determine that critical circumstances exist in CVD investigations if there is a reasonable basis to believe or suspect: (A) that "the alleged countervailable subsidy" is inconsistent with the Subsidies and Countervailing Measures (SCM) Agreement of the World Trade Organization and (B) that there have been massive imports of the subject merchandise over a relatively short period.

The Department's regulations provide that imports must increase by at least 15 percent during the "relatively short period" to be considered "massive" and define a "relatively short period" as normally being the period between the start of the proceeding (*i.e.*, the date the relevant petition was filed) and at least the following three months.[37] The regulations also provide that, if the Department finds that importers, exporters, or producers, had reason to believe, at some point prior to the start of the proceeding, that a proceeding was likely, the Department may consider a period of not less than three months from that earlier time.[38]

A. Alleged Countervailable Subsidies are Inconsistent with the SCM Agreement

To determine whether or not an alleged countervailable subsidy is inconsistent with the SCM Agreement, pursuant to section 703(e)(1)(A) of the Act, the Department considered the evidence currently on the record of this CVD investigation. Specifically, as determined in our initiation checklist, the following subsidy programs, alleged in the Petition and supported by information reasonably available to the petitioners, appear to be either export contingent or contingent upon the use of domestic goods instead of imported goods, which would render them inconsistent with the SCM Agreement: "Preferential Lending and Export Financing Provided by Banco de la Nacion Argentina,"[39] "Article 183.29 Santa Fe Stamp Tax Exemption,"[40] and "Santa Fe Turnover Tax Exemption for Export Sales."[41] Therefore, the Department preliminarily

[34] *Id.*
[35] *See* Memorandum, "Countervailing Duty Investigation of Biodiesel from Argentina: Calculations for the Preliminary Determination of Critical Circumstances," dated concurrently with this *Federal Register* notice (Critical Circumstances Calculation Memorandum), at Attachment I.
[36] *See* LDC Argentina and Louis Dreyfus Company Claypool Holdings LLC Letter, "Biodiesel from Argentina: Response to Request for Quantity and Value Data," July 19, 2017 (LDC Quantity and Value Data); *see also* Vicentin Letter, "Submission of Monthly U.S. Shipment Data for Critical Circumstances Analysis; Biodiesel from Argentina," July 19, 2017 (Vicentin Quantity and Value Data).
[37] *See* 19 CFR 351.206(h)(2), (i).
[38] Id.
[39] *See* Memorandum, "Countervailing Duty Investigation Initiation Checklist: Biodiesel from Argentina," April 12, 2017, at 11.
[40] *Id.* at 16.
[41] *Id.* at 17.

determines that alleged subsidies covered by this CVD investigation are inconsistent with the SCM Agreement.

B. Massive Imports

In determining whether or not there are "massive imports" over a "relatively short period," within the meaning of section 703(3)(1)(B) of the Act, the Department normally compares the import volumes of the subject merchandise for at least three months immediately preceding the filing of a petition (*i.e.*, the "base period") to a comparable period of at least three months following the filing of a petition (*i.e.*, "the comparison period"). Imports will normally be considered massive when imports during the comparison period have increased by at least 15 percent compared to imports during the base period.

The petitioners did not provide, pursuant to 19 CFR 351.206(i), any argument or evidence that importers, exporters, or producers had reason to believe, at some point prior to the filing of the Petition, that a proceeding was likely. Therefore, to determine whether or not there has been a massive surge of imports with respect to the mandatory respondents, we have used a comparison period starting with the month the Petition was filed (*i.e.*, March 2017) and ending with the most recent month for which we have shipping data on the record (*i.e.*, July 2017). We then selected a base period with the same number of months, ending in the month prior to the filing of the Petition (*i.e.*, October 2016 through February 2017). Based on the analysis described above, the Department preliminarily determines that LDC and Vicentin had massive imports over a relatively short period.[42]

For "all other" exporters and producers of biodiesel from Argentina, the Department compared Global Trade Atlas (GTA) data for the comparison and base periods for which GTA data are currently available (*i.e.*, March 2017 through June 2017 and November 2016 through February 2017, respectively), excluding shipments reported by the mandatory respondents. Based on this analysis, we preliminarily determine that all other exporters and producers of biodiesel did not have massive imports over a relatively short period.

C. Preliminary Determination of Critical Circumstances

Based on the criteria and findings discussed above, the Department preliminarily determines that critical circumstances exist with respect to imports of biodiesel from Argentina for LDC Argentina and Vicentin. The Department also preliminarily determines that critical circumstances do not exist with respect to imports of biodiesel from Argentina for all other exporters and producers not individually examined.

The Department will issue its final determination concerning critical circumstances when it issues its final CVD determination. All interested parties will have the opportunity to address

[42] *See* Critical Circumstances Calculation Memorandum.

this preliminary determination in case briefs submitted prior to the completion of the final CVD determination.

VII. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE FACTS AVAILABLE

Sections 776(a)(1) and (2) of the Act provide that the Department shall, subject to section 782(d) of the Act, apply "facts otherwise available" if necessary information is not on the record or an interested party or any other person: (A) withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act.[43]

Section 776(b) of the Act further provides that the Department may use an adverse inference in selecting from among the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. Further, section 776(b)(2) states that an adverse inference may include reliance on information derived from the petition, the final determination from the investigation, a previous administrative review, or other information placed on the record. When selecting an adverse facts available (AFA) rate from among the possible sources of information, the Department's practice is to ensure that the rate is sufficiently adverse "as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner."[44] The Department's practice also ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[45]

Section 776(c)(1) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at

[43] On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015, which made numerous amendments to the AD and CVD law, including amendments to sections 776(b) and 776(c) of the Act, and the addition of section 776(d) of the Act, as summarized below. *See Trade Preferences Extension Act of 2015*, Pub. L. No. 114-27, 129 Stat. 362, dated June 29, 2015. The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained to section 771(7) of the Act, which relate to determinations of material injury by the ITC. *See Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015). Therefore, the amendments apply to this investigation.

[44] *See, e.g., Drill Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 76 FR 1971 (January 11, 2011) (Drill Pipe from the PRC). *See Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8932, dated February 23, 1998.

[45] *See* Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol. I (1994) at 870.

its disposal. Secondary information is "information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise."[46] It is the Department's practice to consider information to be corroborated if it has probative value.[47] In analyzing whether information has probative value, it is the Department's practice to examine the reliability and relevance of the information to be used.[48] However, the SAA emphasizes that the Department need not prove that the selected facts available are the best alternative information.[49]

It is the Department's practice in CVD proceedings to compute an AFA rate for non-cooperating companies using the highest calculated program-specific rates determined for a cooperating respondent in the same investigation, or, if not available, rates calculated in prior CVD cases involving the same country.[50] Specifically, the Department applies the highest calculated rate for the identical subsidy program in the investigation if a responding company used the identical program, and the rate is not zero. If there is no identical program match within the investigation, or if the rate is zero, the Department uses the highest non-*de minimis* rate calculated for the identical program in a CVD proceeding involving the same country. If no such rate is available, the Department will use the highest non-*de minimis* rate for a similar program (based on treatment of the benefit) in another CVD proceeding involving the same country. Absent an above-*de minimis* subsidy rate calculated for a similar program, the Department applies the highest calculated subsidy rate for any program otherwise identified in a CVD case involving the same country that could conceivably be used by the non-cooperating companies.[51] Additionally, when selecting an AFA rate, the Department is not required for purposes of section 776(c) of the Act, or any other purpose, to estimate what the countervailable subsidy rate would have been if the interested party had cooperated or to demonstrate that the countervailable subsidy rate reflects an "alleged commercial reality" of the interested party.[52]

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[46] *See, e.g.*, SAA at 870.
[47] *See* SAA at 870.
[48] *See, e.g.*, SAA at 869.
[49] *See* SAA at 869-870.
[50] *See, e.g., Certain Tow-Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination*, 73 FR 70971, 70975 (November 24, 2008) (unchanged in *Certain Tow-Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 29180 (June 19, 2009), and accompanying IDM at "Application of Facts Available, Including the Application of Adverse Inferences"); *see also Aluminum Extrusions from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 18521 (April 4, 2011) (Aluminum Extrusions from the PRC), and accompanying IDM at "Application of Adverse Inferences: Non-cooperative Companies."
[51] *Id*.; *see* also *Lightweight Thermal Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 57323 (October 2, 2008) (Thermal Paper from the PRC), and accompanying IDM at "Selection of the Adverse Facts Available Rate."
[52] *See* section 776(d)(3) of the Act.

GOA

For the reasons explained below, the Department determines that the application of facts otherwise available is warranted with respect to the GOA because it withheld information that was requested of it and significantly impeded the proceeding, within the meaning of section 776(a)(2)(A) and 776(a)(2)(C) of the Act. Further we find that an adverse inference is warranted, pursuant to section 776(b) of the Act, because, by not responding to our requests for information, the GOA failed to cooperate to the best of its ability.

Application of FA and AFA: "Pacto Fiscal"

In the Department's initial questionnaire, we requested that the GOA coordinate with the respondent companies to determine if the companies were reporting usage of any subsidy programs. Further, we asked the GOA to "describe the assistance, including the amounts, date of receipt, purpose and terms, and answer all questions in the Standard Questions Appendix, as well as other appropriate appendices attached to this questionnaire" relating to the respondents. In its initial response to the Department, the GOA noted that LDC Argentina was reporting a percentage reduction in provincial tax pursuant to Article 4.e of the "Pacto Fiscal," (Decree 14/1994), but stated that it "{did} not consider such reductions, to the extent they were made, to confer any countervailable subsidy." The GOA did not describe the assistance, or answer the questions in the Standard Questions Appendix or other appropriate appendices.

In the Department's July 25, 2017, supplemental questionnaire, the Department again requested that the GOA complete a Standard Questions Appendix and Tax Appendix regarding the "Pacto Fiscal" tax reduction reported by LDC Argentina. In its response, the GOA stated that the "'Pacto Fiscal' is not a binding norm, it is a framework agreement that does not have direct legal effect within the jurisdiction of the Provinces nor is applied *ipso iure* A provincial law is always required to implement its principles. {…} 'Pacto Fiscal' could never be deemed to be a subsidy insofar as there is neither a financial contribution by the GOA nor a benefit thereby conferred to the companies. {…} Argentina believes that no reply to the Standard Question Appendix and Loan Appendix is warranted."[53]

The Department requested this information because the responses to the respective appendices are necessary to determine whether a financial contribution exists and whether the alleged subsidy is specific within the meaning of sections 771(5)(D) and 771(5A) of the Act, respectively. If the GOA was not able to submit the required information in the requested form and manner, it should have promptly notified the Department, in accordance with section 782(c)

[53] *See* GOA August 10, 2017 SQR at 100.

of the Act. It did not do so, nor did it suggest any alternative forms for submitting this information.[54]

Regarding the GOA's objection to our request for a reply to the Standard Question Appendix and the Loan Appendix, we observe that it is the prerogative of the Department, not the GOA, to determine what information is relevant to our investigations and administrative reviews.[55] Because the GOA did not respond to our requests for information on this issue, we have no further basis for evaluating the GOA's claim that "'Pacto Fiscal' could never be deemed to be a subsidy.'" Thus, the Department finds that the information requested regarding "Pacto Fiscal" is necessary to our determination of whether "Pacto Fiscal" provides a financial contribution or is specific within the meaning of 771(5)(D) and 771(5A) of the Act, respectively.

Therefore, we preliminarily determine that necessary information is not available on the record and that the GOA withheld information that was requested of it and, thus, that the Department must rely on "facts otherwise available" in making our preliminary determination.[56] Moreover, by stating that the Department's request for responses to the Standard Question Appendix and Loan Appendix were not warranted, the GOA placed itself in the position of the Department, yet only the Department can determine what is relevant to its investigation.[57] Consequently, we preliminarily determine that the GOA failed to cooperate by not acting to the best of its ability to comply with our request for information and that an adverse inference is warranted in the

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[54] Section 782(c)(1) of the Act states that "{i}f an interested party, promptly after receiving a request from the administering authority or the Commission for information, notifies the administering authority or the Commission (as the case may be) that such party is unable to submit the information requested in the requested form and manner, together with a full explanation and suggested alternative forms in which such party is able to submit the information, the administering authority of the Commission (as the case may be) shall consider the ability of the interested party to submit the information in the requested form and manner and may modify such requirements to the extent necessary to avoid imposing an unreasonable burden on that party."

[55] *See NSK, Ltd. v. United States*, 919 F. Supp. 442, 447 (CIT 1996) (NSK) ("NSK's assertion that the information it submitted to Commerce provided a sufficient representation of NSK's cost of manufacturing misses the point that 'it is Commerce, not the respondent, that determines what information is to be provided for an administrative review.'"); and *Ansaldo Componenti, S.p.A. v. United States*, 628 F. Supp. 198, 205 (CIT 1986) (*Ansaldo*) (stating that "{i}t is Commerce, not the respondent, that determines what information is to be provided").

[56] *See* sections 776(a)(1) and (a)(2)(A) of the Act.

[57] *See Ansaldo*, 628 F. Supp. 198, 205 (CIT 1986) (stating that "{i}t is Commerce, not the respondent, that determines what information is to be provided"). The Court in *Ansaldo* criticized the respondent for refusing to submit information which the respondent alone had determined was not needed, for failing to submit data which the respondent decided could not be a basis for the Department's decision, and for claiming that submitting such information would be "an unreasonable and unnecessary burden on the company." *See Essar Steel Ltd. v. United States*, 721 F. Supp. 2d 1285, 1298-99 (CIT 2010) (stating that "{r}egardless of whether Essar deemed the license information relevant, it nonetheless should have produced it {in} the event that Commerce reached a different conclusion" and that "Commerce, and not Essar, is charged with conducting administrative reviews and weighing all evidence in its calculation of a countervailing duty margin"); *NSK*, 919 F. Supp. at 447 ("NSK's assertion that the information it submitted to Commerce provided a sufficient representation of NSK's cost of manufacturing misses the point that 'it is Commerce, not the respondent, that determines what information is to be provided for an administrative review.'"); *Nachi-Fujikoshi Corp. v. United States*, 890 F. Supp. 1106, 1111 (CIT 1995) ("Respondents have the burden of creating an adequate record to assist Commerce's determinations.").

application of facts available.[58] In drawing an adverse inference, we find that "Pacto Fiscal" constitutes a financial contribution within the meaning of section 771(5)(D)(ii) of the Act and is specific within the meaning of section 771(5A)(B) of the Act. As LDC Argentina reported its usage of "Pacto Fiscal," we are relying on its reported savings to calculate the benefit, within the meaning of section 771(5)(E) of the Act.

Application of FA and AFA: The Province of Santiago del Estero System of Promotion and Industrial Development (PSPID): Ten Year Partial Exemption from Turnover Tax

In the Department's initial questionnaire, we requested that the GOA coordinate with the respondent companies to determine if the companies were reporting usage of any subsidy programs. Further, we asked the GOA to "describe the assistance, including the amounts, date of receipt, purpose and terms, and answer all questions in the Standard Questions Appendix, as well as other appropriate appendices attached to this questionnaire" relating to the respondents. Even though Vicentin's cross-owned affiliate, Los Amores,[59] identified participating in the "Ten Year Partial Exemption from Turnover Tax" program, the GOA did not provide any information related to this program. Specifically, the GOA did not provide a program description and did not provide information pursuant to the applicable appendices for this program in the initial response.[60]

In its first supplemental questionnaire to the GOA, dated July 25, 2017, the Department stated that Los Amores reported receiving benefits under this program, and again requested that the GOA complete a Standard Questions Appendix and Tax Appendix regarding the PDSI "Ten Year Partial Exemption from Turnover Tax" program reported by Vicentin and Los Amores.[61] In its response to the Department, the GOA partially responded to the Standard Questions Appendix and the Tax Questions Appendix, and provided supporting documentation on the laws and decrees establishing and governing this program, including all sub-program options and the agreement between Los Amores and the Province of Santiago del Estero in the form of Decree No. 2160.[62] This decree outlines the details of the benefits it is entitled to in exchange for its industrial investment. However, the GOA did not respond to those questions in the Appendix which are necessary for the Department to make a specificity determination in the context of its analysis of this program.[63] The GOA did not respond to the Appendix question regarding the total amount of assistance approved for all other companies under the program, nor to the question regarding the total amount of assistance approved for the industry in which mandatory respondent companies operate, as well as the totals for every other industry in which companies were approved for assistance under this program. The GOA stated that time constraints

[58] *See* section 776(b) of the Act.
[59] For information about affiliation and cross-ownership see "Attribution of Subsidies" section below.
[60] *See* GOA June 30, 2017 IQR.
[61] *See* Department Letter re: First Supplemental Countervailing Duty Questionnaire to the GOA, dated July 25, 2017 (GOA First SQ).
[62] *See* GOA August 10, 2017 SQR at Exhibit S1-116.
[63] *Id*. at 60-63.

prevented it from supplying this information.[64] In response to the question concerning the total number of companies that applied for, but were denied, assistance under this program, the GOA stated that, "{g}iven the time constraints the GOA is unable to provide the required information. The GOA still is unaware whether the Province of Santiago del Estero compiles this information."[65]

The Department requested this information because the responses to the respective appendices are necessary in determining whether a financial contribution exists and whether the alleged subsidy is specific within the meaning of sections 771(5)(D) and 771(5A) of the Act, respectively. If the GOA was not able to submit the required information in the requested form and manner, it should have promptly notified the Department, in accordance with section 782(c) of the Act. It did not do so, nor did it suggest any alternative forms for submitting this information.[66]

The Department finds that the information requested regarding the "Ten Year Partial Exemption from Turnover Tax" program is necessary to the Department's determination of whether this program is specific within the meaning of 771(5A)(A) and (D) of the Act. However, because the GOA did not fully respond to our requests for information regarding this tax program, we have no further basis for evaluating the specificity of this program. Accordingly, in reaching our determination for the above program, the Department has based its determination of specificity on facts otherwise available, pursuant to sections 776(a)(2)(A) and (C) of the Act. Moreover, the Department determines that the GOA did not cooperate to the best of its ability because it did not provide its information, as requested.

Section 782(c) of the Act provides that if a party is unable to or has difficulties in responding to the Department's requests for information, it must "promptly after receiving a request from {the Department}" notify the agency that it is unable to submit the information, and must further provide a "full explanation and suggested alternative forms in which such party is able to submit the information. . .." Here, the GOA did not notify the Department that it was unable to provide or had difficulties providing the requested industry information for this program. In fact, the GOA did not explain at all why it did not provide this information. Nor did the GOA suggest any alternative method to provide the necessary information to the Department. In its first response, the GOA failed to address the "Ten Year Partial Exemption from Turnover Tax" program altogether, even though it had been reported in Vicentin's response for its cross-owned

[64] *Id*. at 60-61.
[65] *Id*. at 61.
[66] Section 782(c)(1) of the Act states that "{i}f an interested party, promptly after receiving a request from the administering authority or the Commission for information, notifies the administering authority or the Commission (as the case may be) that such party is unable to submit the information requested in the requested form and manner, together with a full explanation and suggested alternative forms in which such party is able to submit the information, the administering authority of the Commission (as the case may be) shall consider the ability of the interested party to submit the information in the requested form and manner and may modify such requirements to the extent necessary to avoid imposing an unreasonable burden on that party."

affiliate, Los Amores. The GOA had almost two months to obtain this information from the Province of Santiago del Estero to the Department, from June 7, 2017, when the Department first requested that the GOA provide a full section II response for Los Amores, to August 10, 2017, the date the first supplemental response was due. The Department granted the GOA three extensions to respond to the Department's initial questionnaire, and two extensions to respond to the first supplemental questionnaire.[67] At no time during those two months did the GOA contact the Department to indicate that it had problems with accessing the company and industry information the Department requested in its Standard Questions Appendix.

By failing to fully respond to the Department's initial and first supplemental questionnaires, we determine that the GOA withheld the information requested and failed to provide the specific industry information by the deadlines established, and, thus, significantly impeded the proceeding, per sections 776(a)(2)(A), (B), and (C) of the Act. We further find that an adverse inference is warranted under section 776(b) of the Act. The GOA failed to cooperate to the best of its ability when it failed to provide the industry information requested in the Standard Questions Appendix, and, moreover, it never identified any difficulties in providing this information to the Department.[68] In drawing an adverse inference, we find that the "Ten Year Partial Exemption from Turnover Tax" program is specific, as AFA.

Vicentin

Application of FA and AFA: The Province of Santiago del Estero System of Promotion and Industrial Development (PSPID): Ten Year Partial Exemption from Turnover Tax

For the reasons explained below, the Department determines that the application of facts otherwise available is warranted with respect to Vicentin and its cross-owned input supplier, Los Amores, because they withheld information that was requested of them and significantly impeded the proceeding, within the meaning of sections 776(a)(2)(A) and 776(a)(2)(C) of the Act. Further, we find that an adverse inference is warranted, pursuant to section 776(b) of the Act, because, by not responding to our requests for information, Vicentin and Los Amores failed to cooperate to the best of their ability.

In its initial response to the Department, Vicentin reported that Los Amores received a 10-year partial exemption on turnover tax from the Province of Santiago del Estero - Law No. 6,750.[69] Vicentin further stated that the benefits received from that particular program were not tied to subject merchandise and, therefore, are not related to this investigation. Vicentin indicated,

[67] The Department granted to the GOA extensions to respond to the initial questionnaire on June 20, 2017, June 23, 2017, and June 29, 2017, and extensions to respond to the first supplemental questionnaire on July 27, 2017, and August 8, 2017.
[68] *See* section 776(b) of the Act.
[69] *See* Vicentin-Los Amores June 30, 2017 IQR, at 21-22.

however, that it would provide a full response if so requested.[70] Based on its complete review of Vicentin's initial questionnaire response, the Department informed Vicentin that, in accordance with section 782(d) of the Act, its response was deficient in several respects and required additional information.[71] As requested by the Department in its supplemental questionnaire, Vicentin responded to the Standard Appendix, but only partially to the Tax Appendix. Vicentin explained that "{i}n researching this issue, we have discovered that the benefits afforded under the referenced programs extend beyond the turnover tax exemption and report accordingly below."[72] Vicentin proceeded to explain in its responses to both appendices that Provincial Law No. 6,750 provides for three different benefits, one of which consists of five specific types of benefits, with the already reported turnover tax exemption being one of them.[73] However, Vicentin stated that:

> "Given time constraints and limited access to records of a company that is not cross-owned with Vicentin, we are unable to obtain necessary information to provide the calculation. At the same time, the program in question is clearly tied to production unrelated to biodiesel production and therefore is not relevant to this investigation."[74]

Based on Vicentin's initial affiliation response to section III of the initial questionnaire submitted on May 30, 2017,[75] the Department first requested, on June 6, 2017, that Vicentin provide a full section III response for its affiliate, Los Amores, along with its own full section III response and section III response for other affiliates.[76] The Department granted Vicentin two more extensions for its supplemental affiliation response and three more extensions to fully respond to section III of the Department's supplemental questionnaire, including for Los Amores' section III response, until May 29, 2017.[77] On July 17, 2017, because Vicentin reported that Los Amores benefitted from tax exemptions during the POI under Provincial Law No. 6,750, the Department asked

[70] *Id.*, Los Amores at 22.
[71] *See* Department Letter re: First Supplemental Countervailing Duty Questionnaire to Vicentin, dated July 17, 2017 (Vicentin First SQ).
[72] *See* Vicentin August 3, 2017 SQR at 37.
[73] *Id*. at 39-40 and Exhibit S1-34.
[74] *Id*. at 40.
[75] *See* Vicentin May 30, 2017 AFFR.
[76] *See* Department Letter, "Request for Additional Information Regarding the Affiliation Response to the Department's Initial Questionnaire," dated June 6, 2017.
[77] *Note*: The Department issued the initial questionnaire to this investigation on May 10, 2017, setting the due date for respondents to submit their affiliation responses to questions in section III by May 22, 2017. Based on Vicentin's request, the Department extended the deadline to respond to the Affiliation Questions until May 26, 2017. Because the one-day lag rule and a holiday weekend, the final submission due date for the affiliation response was May 30, 2017. The Department granted two more extension to Vicentin for filing the supplemental affiliation response and three more extension for filing the full section III response, including for Los Amores until June 30, 2018: June 9, 2017, June 20, 2017, June 23, 2017. Based on the one-day lag rule, Vicentin's initial questionnaire response was filed on June 30, 2017. The Department granted Vicentin another extension to file certain Exhibits to the section III response on June 29, 2017.

Vicentin in its first supplemental questionnaire, to provide a full response to the Standard Appendix and the Tax Program Appendix with respect to that program and Los Amores.[78] Again, the Department granted Vicentin two extensions to respond.[79] That is, Vicentin had two months to collect and tabulate Los Amores' benefit information for the Department.

According to the information provided by the GOA, Los Amores was eligible for three types of benefits listed under Province of Santiago del Estero - Law No. 6,750 during the POI: "{1} repayment of up to 30% of the investment made, {2} the tax exemption of the provincial taxes for a term of up to ten (10) years, in total or staggered form and {3} the subsidy of up to 50% of the interest rate of the credit line to be taken by the firm."[80] Vicentin provided Los Amores' benefit information for the third type of benefit, but only for some years prior to the POI.[81] Vicentin did not place any additional information or explanations on the specific application or amounts of Los Amores' benefits on the record of this investigation.

Without the appropriate benefit information for the POI, it is not possible to calculate accurately the subsidy rates for the above listed program. Accordingly, in reaching our determination for the above program, we have based the rates on facts otherwise available, pursuant to sections 776(a)(2)(A) and (C) of the Act. Moreover, the Department determines that Vicentin and Los Amores did not cooperate to the best of their ability because they did not provide information in the form and manner requested. Moreover, by stating that Los Amores is not a cross-owned company of Vicentin, Vicentin assumed the role of the Department, but only the Department is in the position to make that determination.[82]

Section 782(c) of the Act provides that if a party is unable to or has difficulties in responding to the Department's requests for information, it must "promptly after receiving a request from {the Department}" notify the agency that it is unable to submit the information, and must further provide a "full explanation and suggested alternative forms in which such party is able to submit the information. . .." Here, Vicentin did not notify the Department that it was unable to provide, or had difficulty in providing, Los Amores' benefit information with respect to this program. In its first response, Vicentin only informed the Department that Los Amores participated in this program, and that it would provide a full response to the appendices if the Department required, indicating that it believed the program to be irrelevant to this investigation, a position it later reiterated in its supplemental response.[83] Vicentin had two months to collect the benefit information the Department requested, from June 6, 2017, when the Department first requested Vicentin to provide a full section III response for Los Amores, to August 3, 2017, the date the

[78] *See* Department Letter, "Request for Additional Information Regarding Vicentin S.A.I.C.'s, et Alia, Responses to the Department's Initial Questionnaire," dated July 17, 2017.
[79] *Note:* The Department granted extensions to Vicentin to respond to the first supplemental questionnaire on July 20, 2017 and on July 27, 2017.
[80] *See* GOA August 10, 2017 SQR at Exhibits S1-116 and S1-117.
[81] *See* Vicentin August 3, 2017 SQR at 39.
[82] *See Ansaldo*, 628 F. Supp. 198, 205 (CIT 1986)
[83] *See* Vicentin June 30, 2017 IQR at 21-22 and Vicentin August 3, 2017 SQR at 40.

first supplemental response was due. At no time during those two months did Vicentin contact or notify the Department that it had problems or other issues with accessing and reporting that benefit information for Los Amores. By failing to fully respond to the Department's initial and first supplemental section III questionnaires and by declaring the information requested to be irrelevant, we determine that Vicentin withheld the information requested and failed to provide the specific benefit information by the deadlines established, and, thus, and significantly impeded the proceeding, per sections 776(a)(2)(A), (B), and (C) of the Act. We further find that an adverse inference is warranted under section 776(b) of the Act. Vicentin failed to cooperate to the best of its ability when it failed to provide the benefit information with its questionnaire response. Vicentin did not inform the Department of its difficulty in responding, and, moreover, declared that the information requested was not relevant.

It is the Department's practice in CVD proceedings to compute an AFA rate for non-cooperating companies using the highest calculated program-specific rates determined for a cooperating respondent in the same investigation or, if such rates are not available, rates calculated in prior CVD cases involving the same country.[84] Specifically, pursuant to an established hierarchy for selecting AFA rates, the Department applies the highest calculated rate for the identical subsidy program in the investigation if a responding company used the identical program and the rate is not zero. If there is no identical program match within the investigation, or if the rate is zero, the Department uses the highest non-*de minimis* rate calculated for the identical program in a CVD proceeding involving the same country. If no such rate is available, the Department will use the highest non-*de minimis* rate for a similar program, based on treatment of the benefit, in another CVD proceeding involving the same country. Absent an above-*de minimis* subsidy rate calculated for a similar program, the Department applies the highest calculated subsidy rate for any program otherwise identified in a CVD case involving the same country that could conceivably be used by the non-cooperating companies.[85]

Because Vicentin failed to act to the best of its ability in this investigation, in accordance with section 776(b) of the Act, we made an adverse inference in selecting from the facts available that Vicentin and its cross-owned input supplier, Los Amores, benefitted from the tax exemption of

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[84] *See, e.g., Certain Tow-Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination*, 73 FR 70971, 70975 (November 4, 2008) (*Lawn Groomers PRC Preliminary Determination*) (unchanged in *Certain Tow-Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 29180 (June 19, 2009) (*Lawn Groomers PRC Final*, and accompanying IDM at "Application of Facts Available, Including the Application of Adverse Inferences"); *Aluminum Extrusions from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 18521 (April 4, 2011) (Aluminum Extrusions PRC Final), and accompanying IDM at "Application of Adverse Inferences: Non-Cooperative Companies."

[85] *See, e.g., Lawn Groomers PRC Preliminary Determination* at 70975 (unchanged in Lawn Groomers PRC Final); *Lightweight Thermal Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 57323 (October 2, 2008), and accompanying IDM at "Selection of the Adverse Facts Available Rate."

the provincial taxes for a term of up to ten (10) years sub-program. Using the methodology described above, we have applied an AFA rate to Vicentin and Los Amores for the tax exemption program.[86]

Specifically, because no identical tax exemption program exists in the instant investigation, there is no calculated rate for an identical program in this proceeding. Accordingly, as AFA, we are applying the 10 percent *ad valorem* subsidy rate calculated for a similar program, *i.e.*, the "Rebate of Indirect Taxes (Reembolso)" program in *Hot-Rolled Steel from Argentina.*[87]

With regard to the reliability aspect of corroboration, we note that the rate on which we are relying is a subsidy rate calculated in another CVD proceeding on Argentina. Further, the calculated rate was based on information from a similar program, "Rebate of Indirect Taxes (Reembolso)," and, thus, reflects the actual behavior of the GOA with respect to these similar subsidy programs. Moreover, no information has been presented that calls into question the reliability of the calculated rate that we are applying as AFA for this program. Finally, unlike other types of information, such as publicly available data on the national inflation rate of a given country or national average interest rates, there typically are no independent sources for data on company-specific benefits resulting from countervailable subsidy programs. With respect to the relevance aspect of corroborating the rates selected, the Department will consider information reasonably at its disposal in considering the relevance of information used to calculate a countervailable subsidy benefit. Where circumstances indicate that the information is not appropriate as AFA, the Department will not use it.[88] Thus, we have corroborated the selected rate to the extent possible and find that the rate is reliable and relevant for use as an AFA rate for the programs listed above (*i.e.*, the tax exemption of the provincial taxes for a term of up to ten (10) years sub-program).

Furthermore, under section 776(d) of the Act, the Department may use any countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country or, if there is no same or similar program, use a CVD rate for a subsidy program from a proceeding that the administering authority considers reasonable to use, including the highest of such rates. Therefore, in accordance with section 776(c)(1) and 776(d) of the Act, we have applied a subsidy rate which was calculated in a previous Argentina CVD proceeding, specifically, the underlying investigation of that order, and have corroborated the AFA rate to the extent practicable.

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[86] *See Final Affirmative Countervailing Duty Determinations; Certain Welded Carbon Steel Pipe and Tube Products from Turkey*, 51 FR 1268 (January 10, 1986) (Welded Pipe and Tube from Turkey).
[87] *See Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products from Argentina*, 66 FR 37007 (July 16, 2001) (Hot-Rolled Steel from Argentina) at Rebate of Indirect Taxes (Reembolso).
[88] *See, e.g., Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 February 22, 1996).

VIII. SUBSIDIES VALUATION

A. Allocation Period

The Department normally allocates the benefits from non-recurring subsidies over the average useful life (AUL) of renewable physical assets used in the production of subject merchandise.[89] The Department finds the AUL in this proceeding to be 10 years, pursuant to 19 CFR 351.524(d)(2) and the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System, as revised.[90] The Department notified the respondents of the 10-year AUL in the initial questionnaire and requested data accordingly. No party in this proceeding disputed the allocation period.

Furthermore, for non-recurring subsidies, we applied the "0.5 percent test," as described in 19 CFR 351.524(b)(2). Under this test, we divide the amount of subsidies approved under a given program in a particular year by the relevant sales value (*e.g.*, total sales or export sales) for that same year. If the amount of the subsidies is less than 0.5 percent of the relevant sales value, then the benefits are allocated to the year of receipt rather than over the AUL.

B. Attribution of Subsidies

Cross-Ownership: In accordance with 19 CFR 351.525(b)(6)(i), the Department normally attributes a subsidy to the products produced by the company that received that subsidy. However, additional rules at 19 CFR 351.525(b)(6)(ii)-(v) provide for the attribution of subsidies received by respondents with cross-owned affiliates. Subsidies to the following types of cross-owned affiliates are covered in these additional attribution rules: (ii) producers of the subject merchandise, (iii) holding companies or parent companies; (iv) producers of an input that is primarily dedicated to the production of the downstream product; or (v) an affiliate producing non-subject merchandise that otherwise transfers a subsidy to the respondent.

According to 19 CFR 351.525(b)(6)(vi), cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. This section of the Department's regulations states that this standard will normally be met where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. The preamble to the Department's regulations further clarifies the Department's cross-ownership standard. According to the preamble, relationships captured by the cross-ownership definition include those where:

[89] *See* 19 CFR 351.524(b).
[90] *See* U.S. International Revenue Service Publication 946, "How to Depreciate Property," (Feb. 27, 2017) at Asset Class 49.5: "Waste Reduction and Resource Recovery Plants," publicly available at https://www.irs.gov/pub/irs-pdf/p946.pdf.

> {T}he interests of two corporations have merged to such a degree that one corporation can use or direct the individual assets (or subsidy benefits) of the other corporation in essentially the same way it can use its own assets (or subsidy benefits) . . . Cross-ownership does not require one corporation to own 100 percent of the other corporation. Normally, cross-ownership will exist where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. In certain circumstances, a large minority voting interest (for example, 40 percent) or a "golden share" may also result in cross-ownership.[91]

Thus, the Department's regulations make clear that the agency must look at the facts presented in each case in determining whether cross-ownership exists. The U.S. Court of International Trade (CIT) has upheld the Department's authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits.[92]

LDC Argentina

As noted above, the Department requested that LDC Argentina complete questionnaire responses on behalf of itself and its affiliates LDC Semillas, Rosario, and a third company.[93] Based on the information provided, we preliminarily find that LDC Argentina, LDC Semillas, and Rosario are cross-owned within the meaning of 19 CFR 351.525(b)(6), and that the third company is not cross-owned with LDC Argentina. Additionally, we find that benefits from subsidies received by LDC Semillas will be attributed to LDC Argentina. We are not preliminarily countervailing any program under which Rosario may have reported receiving benefits.

As stated by LDC Argentina, it is affiliated with LDC Semillas.[94] LDC Semillas develops and markets wheat and soybean seeds. LDC Semillas trades soybean seeds for the equivalent value in soybeans, and sells these soybeans to LDC Argentina.[95] Further, LDC Argentina notes that LDC Semillas satisfies at least one of the conditions for cross-ownership, as LDC Semillas supplied soybeans to LDC Argentina during the POI.[96] Based on the ownership information on the record,[97] we preliminarily determine that these companies are cross-owned within the meaning of 19 CFR 351.525(b)(6)(vi) because LDC Argentina can use or direct the assets of LDC Semillas in essentially the same ways it can use its own assets. Additionally, we

[91] *Id*. at 63 FR 65348, 65401.
[92] *See Fabrique de Fer de Charleroi, SA v. United States*, 166 F. Supp. 2d 593, 603 (CIT 2001).
[93] The name of this company is considered business proprietary information and is provided in LDC Argentina's Preliminary Calculation Memorandum. *See* LDC Argentina Preliminary Calculation Memorandum.
[94] *See* LDC Argentina May 26, 2017 AFFR at 3
[95] *Id.* at 3.
[96] *Id.* at 4.
[97] LDC Semillas's ownership information is business proprietary. Accordingly, further discussion is confined to LDC Argentina's Preliminary Calculation Memorandum.

preliminarily find that LDC Semillas is an input supplier because the production of soybeans is primarily dedicated to production of biodiesel.[98] Accordingly, we are attributing any benefits received by LDC Semillas during the POI to LDC Argentina pursuant to 19 CFR 351.525(b)(6)(iv).

The record evidence pertaining to the ownership structure of LDC Argentina, LDC Semillas, and Rosario and the operations of Rosario and the third company is business proprietary. Therefore, further discussion of cross-ownership and attribution of any subsidies is discussed in LDC Argentina's Preliminary Calculation Memorandum. The precise sales denominators used to calculate the countervailable subsidy rates for the various subsidy programs described below are also discussed in greater detail in LDC Argentina's Preliminary Calculation Memorandum.

Vicentin

Vicentin responded on behalf of itself and four affiliates, as well as one toller, in which the respondent holds no direct ownership interest, involved in the production of subject merchandise: Oleaginosa San Lorenzo S.A. (San Lorenzo), Sir Cotton S.A. (Sir Cotton), Los Amores S.A. (Los Amores), Renova S.A. (Renova), La Porfia S.A. (La Porfia), and the toller Patagonia Bioenergia S.A. (Patagonia). We preliminarily determine that these entities are affiliated within the meaning of 771(33) of the Act and 19 CFR 351.102(b)(3). We also preliminarily determine that Vicentin is cross-owned with San Lorenzo and Los Amores within the meaning of 19 CFR 351.525(b)(6)(vi) because of the shared ownership relationship of Vicentin with San Lorenzo and Los Amores, and the shared board memberships and management positions held by certain individual owners.[99]

As stated by Vicentin, based on its ownership relationship, it has a cross-ownership relationship with San Lorenzo.[100] San Lorenzo is a crusher of soybeans for the production of soybean meal and soybean oil, both for the production of edible oil and oil for the production of biodiesel. Oil for biodiesel constitutes the majority of its production, and it performed toll crushing services for Vicentin during the POI. San Lorenzo does not produce or export any biodiesel itself.[101] Based on this information, we preliminarily find that San Lorenzo is an input supplier and that the production of soybean oil is primarily dedicated to the production of biodiesel. Accordingly, we are attributing the benefits received by San Lorenzo during the POI to Vicentin pursuant to 19 CFR 351.525(b)(6)(iv).

[98] *See* 19 CFR 351.525(b)(6)(iv).
[99] The details of the ownership information of Vicentin and its cross-owned affiliates is business proprietary. *See* Vicentin Preliminary Calculation Memorandum; Vicentin May 30, 2017AFFR at 7-8, 18-22, and Exhibits V.3-V.6; Vicentin June 16, 2017 SAFFR at 5-8, and Vicentin August 3, 2017 SQR at 3 and 5, 11-13 and Exhibits 13-14.
[100] *Id.* Vicentin May 30, 2017AFFR at 18-19.
[101] *Id.* Vicentin August 3, 2017 SQR at 15-16.

Los Amores is a grower and seller of soybeans, and sold soybeans and other input products to Vicentin during the POI. In addition, Los Amores maintained other business relationships with Vicentin during the POI related to subject merchandise.[102] Further, we preliminarily find that Los Amores is an input supplier and that the production of soybeans and soybean products is primarily dedicated to the production of biodiesel, pursuant to 19 CFR 351.525(b)(6)(iv). While none of the common shareholders of both companies hold a controlling ownership interest, they do share common board members and directors, and/or persons in management positions. Accordingly, we preliminarily determine that Vicentin could use or direct the subsidy benefits of Los Amores in essentially the same way it could use its own subsidy benefits, per 19 CFR 351.525(b)(6)(vi). Therefore, we are attributing the benefits received by Los Amores during the POI to Vicentin pursuant to 19 CFR 351.525(b)(6)(iv).

C. Denominators

In accordance with 19 CFR 351.525(b), the Department considers the basis for the respondents' receipt of benefits under each program when attributing subsidies (*e.g.*, to the respondent's export sales for export subsidies or to the respondent's total sales for domestic subsidies). For more information regarding the classification of subsidies as export or domestic, *see* the Preliminary Calculation Memorandum.

D. Benchmarks

Loan Benchmarks

We are investigating loans that the respondents received under the Preferential Lending and Export Financing Provided by Banco de la Nacion Argentina (BNA) Export Financing program. For programs requiring the application of a benchmark interest rate or a discount rate, 19 CFR 351.505(a)(1) states a preference for using an interest rate that the company could have obtained on a comparable loan in the commercial market. Also, 19 CFR 351.505(a)(3)(i) states that the Department will normally rely on actual short-term and long-term loans obtained by the firm. However, when there are no comparable commercial loans, the Department may use a national average interest rate, pursuant to 19 CFR 351.505(a)(3)(ii). When a loan is denominated in a foreign currency, the Department will use a benchmark denominated in the same foreign currency to calculate the relevant benefit pursuant to 19 CFR 351.505(a)(2)(i). Finally, 19 CFR 351.505(a)(2)(ii) states that the Department will not consider a loan provided by a government owned special purpose bank for purposes of calculating benchmark rates.

Section 771(E)(ii) of the Act indicates that the benchmark should be a market-based rate. As explained below, the Department has preliminarily determined that loans granted by Argentine financial institutions are not useable for benchmark purposes because the GOA significantly

[102] *See* Vicentin May 30, 2017AFFR at 19-20, and Exhibit V.6, and Vicentin June 16, 2017 SAFFR at 8-9.

intervenes in the Argentine banking sector. Specifically, the GOA significantly intervenes in the banking sector and in the operations of Argentina's financial institutions via the Central Bank of the Argentine Republic (BCRA) and its Charter Law No. 24,155.[103] The BCRA Credit Policy,[104] clearly specifies the targets of credit assistance: "{t}he credit assistance granted by financial institutions must be aimed at financing the investment, production, marketing and consumption of goods and services required by domestic demand as well as by the country's exports or direct investments abroad made by companies residing in the country."[105] In addition, in the case of foreign-currency financing, the BCRA Credit Policy further restricts financial institutions' financing of certain recipients and purposes.[106] The level of GOA involvement in the banking sector manifests itself in BCRA communications on the record.[107] As mandated by these communications, certain lines of credit for productive investment are limited to certain level enterprises or for certain types of investment projects (*e.g.* Communication "A" 5600 dictates the specific lines of credit are permitted for micro, small and medium-sized enterprises, and "investment projects that include any of the following: expansion of the productive capacity; increase in direct and formal employment; import substitution; expansion of the export capacity; investment in capital goods.")[108] Further, the communications establish eligibility requirements, maximum interest rates, and currency and maturity dates for certain lines of credit and forms of investment.

The level of GOA involvement and intervention in Argentina's financial/banking sector has also been confirmed by Vicentin, when it states that "{t}he National government directs these institutions to promote the development of strategic resources for the country."[109] LDC Argentina confirmed as much by stating that its loans from commercial institutions were granted pursuant to the BCRA institutions.[110] Because of this, any loans received by the respondents from private Argentine or foreign-owned banks would be unsuitable for use as benchmarks under 19 CFR 351.505(a)(2)(i). For the same reasons, we cannot use a national interest rate for commercial loans as envisaged by 19 CFR 351.505(a)(3)(ii).

In addition, the Department does not have suitable benchmark information from the respondents. When the Department requested that Vicentin provide certain short-term loan agreements with banks from which that it received short-term pre-export financing in effect during the POI,

[103] *See* GOA June 30, 2017 IQR at 127 and Exhibit 52. *Note*: The GOA describes the functions and powers of the BCRA, as listed in Article 4 of the Charter to consist of the ability to regulate the functioning of the financial system, to apply the Financial Entities Law and rules, to regulate the amount of money and interest rates, and *the direction of credit.*
[104] *Id*. at Exhibit 52 Articles 1.1, 1.4, and 2.1.1, and 2.5
[105] *Id*. at Exhibit 52 Article 1.1.
[106] *Id.* at Exhibit 52.
[107] *See* LDC Argentina June 29, 2017 IQR at Exhibit A-16-18.
[108] *Id*. at Exhibit A-17.
[109] *See* Vicentin June 30, 2017 IQR at 22.
[110] *See* LDC Argentina June 29, 2917 IQR at Exhibit A-13.

Vicentin stated that its short-term loans were not subject to specific loan agreements, but rather "periodic confirmations."[111] Accordingly, Vicentin did not place any loan documentation on the record of this investigation.[112] As such, we cannot use Vicentin's short-term loans reported other than its BNA export pre-financing loans for our benchmark calculations. Los Amores, which also received BNA loans under the BNA Regulation 510, did not report benchmark loans to the Department.

The Department determined that significant government intervention in the banking sector exists, and that interest rates of a given type of financial instrument do not reflect rates that would be found in a functioning market. Therefore, the Department cannot rely on in-country loans as benchmarks, and cannot use the loans from Argentine financial institutions. That is, because the Department determined that the loans granted by Argentine financial institutions are not useable for benchmark purposes, in accordance with section 771(5)(E)(ii) of the Act, the Department had to rely on some other financial instrument for its benchmarks.[113] Accordingly, the Department relied on the average interest rates for discounted and purchased notes in foreign currency, granted to non-financial private entities, based on the term of duration, *i.e.*, 89 days, and more than 90 days.[114] For the long-term investment financing loans Los Amores received under Regulation 400, we used the yearly average long-term bond lending rate in Argentina from the IMF Statistics.

Benchmark for Soybeans and Ocean Freight

The petitioner placed an annual CIF Rotterdam price for soybeans from the World Bank on the record.[115] The GOA and Vicentin each placed monthly FOB U.S. Gulf of Mexico prices during the POI for soybeans from the GOA's Ministry of Agribusiness on the record.[116] No party submitted international freight costs for soybeans.

Concurrent with this preliminary determination, the Department placed monthly CIF Rotterdam prices for soybeans from the World Bank and 2016 ocean freight quotes (Rotterdam to Buenos Aires) from Maersk Lines on the record.[117] We have used these data for this preliminary

[111] *See* Vicentin August 3, 2017 SQR at 28.
[112] The GOA, however, did submit executed loan forms. *See* GOA June 30, 2017 IQR at Exhibits 63 and 64.
[113] *See Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 64645 (October 25, 2007), and accompanying Issues and Decision Memorandum at Comment 10, and *Countervailing Duty Investigation of 1, 1, 1, 2 Tetrafluoroethane from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 79 FR 62594 (October 20, 2014), and accompanying Issues and Decision Memorandum (IDM) at 10-12
[114] *See* GOA June 30, 2017 IQR at Exhibit 5.
[115] *See* Volume I of the Petition at 26.
[116] *See* GOA June 30, 2017 IQR at Exhibit 36 and Vicentin August 3, 2017 at Exhibit 20.
[117] *See* LDC and Vicentin Calculation Memoranda. Pursuant to 19 CFR 351.301(c)(4), parties will have one opportunity submit factual information to rebut or clarify this information. As noted in the relevant memoranda, any rebuttal information will be due on August 30, 2017.

determination. *See* "Provision of Soybeans for Less-Than-Adequate Remuneration (LTAR) Through Export Restraints" section, below.

IX. ANALYSIS OF PROGRAMS

A. Programs Preliminarily Determined to be Countervailable

Government of Argentina (GOA) Programs

1. Provision of Soybeans for Less -Than-Adequate Remuneration (LTAR) Through Export Restraints

The petitioner claims that soybeans are provided for LTAR to biodiesel producers in Argentina.[118] More specifically, the petitioner claims that the GOA "entrusts and directs private entities" to provide soybeans for LTAR to biodiesel producers, within the meaning of sections 771(5)(D)(iii), 771(5)(B)(iii), and 771(5)(E)(iv) of the Act, through an export tax that maintains a low domestic price for soybeans. Soybeans are the key raw material input used to produce biodiesel in Argentina.[119] The petitioner claims that the GOA's export tax on soybeans is intended to lower the cost of soybeans for soybean processors, including biodiesel producers."[120]

> According to the OECD, through its export tax regime the GOA imposes: "higher rates for raw materials or input products while lower rates apply for finished products. {…} The price advantage provided to domestic downstream industries can distort and reduce price competition in both domestic and foreign markets."[121]

In addition, the International Renewable Energy Agency (IRENA) stated that:

> "Differential export taxes for biofuels versus other products derived from the same feedstock promoted the export of biofuels, especially biodiesel."[122]

The World Bank stated that:

> the GOA levies high export taxes which has the effect of "lowering the feedstock cost domestically and encouraging exports of biodiesel."[123]

[118] *See* Volume I of the Petition at 17.
[119] *Id.*
[120] *Id.* at 19.
[121] *See* Volume I of the Petition at Exhibit CVD-ARG-07 at 18.
[122] *See* Volume I of the Petition at Exhibit CVD-ARG-03 at 4.
[123] *See* Volume I of the Petition at Exhibit at CVD-ARG-01 at 9.

Finally, the USDA recently stated that the GOA's high export taxes on inputs are a:

> "factor which contributed to the expansion of the local biodiesel industry.[124]

The GOA has had an export tax in place for soybeans since 1994.[125] Since its introduction, the GOA has revised the export tax on soybeans on several occasions. As noted in the table below, the text of most measures used to adjust the export tax beyond the original 3.5 percent rate reflects the GOA's intention of reducing domestic prices in the context of rising world market prices.

Resolution	Change in Tax	Notes
No. 11/2002: Creation of consumption export duties on various goods included in the Mercosur Common Nomenclature.[126] Ministry of Economy and Infrastructure (3/4/2002)	Increased from 3.5% to 13.5%	"The effects of any potential substantive change in international prices of agricultural productions shall also be considered."
No. 35/2002: Creation of export duties on various goods for consumption included in tariff codes of the Mercosur Common Nomenclature.[127] Ministry of Economy (4/5/2002)	Increased from 13.5% to 23.5%	"Law No. 22415 allows the imposition of export duties on exports of goods for consumption, in order to stabilize domestic prices until they reach convenient levels and maintain a supply that meets the domestic market needs."
No. 10/2007: Creation of an additional export duty on goods included in certain tariff codes.[128] Ministry of Economy and Production (1/11/2007)	Increased from 23.5% to 27.5%	"The international prices of grains have increased substantially…the creation of additional export duties on a number of the aforementioned goods is deemed convenient."
No. 369/2007: MERCOSUR Common Nomenclature (NCM). Modification of export duties for certain goods in Annex XIV of Decree No. 509/22007, as amended.[129] Ministry of Economy and Production (11/7/2007)	Increased from 27.5% to 35%	"Increasing the export duties collected on a series of goods is deemed convenient for the purpose of reducing domestic prices, consolidating the improvements on the distribution of income and stimulating added value."
No. 125/2008: Export duties. Formula for the calculation of the export duties applicable to	Dependent on FOB value	"Cereal grains and oilseeds international prices have significantly increased over the last years, with a high volatility of their

[124] *See* Volume I of the Petition at Exhibit CVD-ARG-05 at 5.
[125] *See* GOA June 30, 2017 IQR at Exhibit CVD-GOA-10.
[126] *See* GOA June 30, 2017 IQR at Exhibit CVD-GOA-11.
[127] *Id*. at Exhibit CVD-GOA-13.
[128] *Id*. at Exhibit CVD-GOA-12.
[129] *Id*. at Exhibit CVD-GOA-17.

certain tariff codes for cereal grains and oilseeds.[130] Ministry of Economy and Production (3/10/2008)		interannual variation rates. The continuance of such a scenario could have negative effects on the economy as a whole, such as higher domestic prices, lower fairness in the distribution of wealth and growing uncertainty as to investment decisions in the agriculture and livestock industry. The proposed amendment to the scheme of export duties applicable to a key subgroup of cereal grains and oilseeds is an appropriate tool to solve the aforementioned problems."
No. 64/2008: Grains and Oilseeds. Creation of export duties on varieties of wheat, corn, soybean and sunflower included in the tariff codes of the MERCOSUR Common Nomenclature (NCM) for FOB prices.[131] Ministry of Economy and Production (5/30/2008)	Adjusting Variable Export Tax	"The purpose of the scheme of mobile export duties is to mitigate the impact on domestic prices of the increase in international prices of grains and oilseeds and their by-products, contributing to improve income distribution."
Executive Order No. 133/2015: Export Duty Rate.[132] The President of Argentina (12/16/2015)	Decreased from 35% to 30%	"In the case of soybeans and its by-products, the increase in the planted area and the record harvest of the past season has not prevented the decline of competitiveness and profitability of its entire associated value chain."

From 1994 through 2001 (when the export tax rate was 3.5 percent), domestic soybean prices in Argentina were slightly less than the world soybean price.[133] In 2001, the difference in prices was $26 per metric ton.[134] By the end of 2002, after the export tax increased to 23.5 percent, the difference between Argentine domestic soybean prices and world market prices had grown to nearly $50 a metric ton.[135] Between 2003 and 2006, the average price differential increased to over $100 per metric ton.[136] In 2007, when the GOA increased the export tax from 23.5 percent to 35 percent, the price differential increased to $165 per metric ton.[137] The price differential increased to $200 per metric ton in 2015.[138] In 2016, after the GOA reduced the export tax to 30%, the price differential decreased to $146 per metric ton. At the same time, the GOA

[130] *Id*. at Exhibit CVD-GOA-19.
[131] *Id*. at Exhibit CVD-GOA-18.
[132] *Id*. at Exhibit CVD-GOA-29.
[133] *See* Volume I of the Petition at 26.
[134] *See* Volume I of the Petition at CVD-ARG-21.
[135] *Id*.
[136] *Id*.
[137] *Id*.
[138] *Id*.

eliminated export taxes on all other crop commodities (*e.g.*, corn went from 20 percent to zero).[139]

Section 771(5)(B)(iii) of the Act states that a subsidy exists when an authority "…entrusts or directs a private entity to make a financial contribution, if providing the contribution would normally be vested in the government and the practice does not differ in substance from practices normally followed by governments."[140] The SAA provides guidance regarding circumstances in which the Department will find that a private party has been entrusted or directed by an "authority" to make a financial contribution, within the meaning of section 771(5)(B)(iii) of the Act. The SAA states:

> In the past, the Department . . . . has countervailed a variety of programs where the government has provided a benefit though private parties. (*See, e.g.*, Certain Softwood Lumber Products from Canada, Leather from Argentina, Lamb from New Zealand, Oil Country Tubular Goods from Korea, Carbon Steel Wire Rod from Spain, and Certain Steel Products from Korea). The specific manner which the government acted through the private party to provide the benefit varied wildly in the above cases. Commerce has found a countervailable subsidy to exist where the government took or imposed (through statutory, regulatory or administrative) a formal, enforceable measure which directly led to a discernible benefit being provided to the industry under investigation.[141]

However, where there is no "direct legislation to entrust or direct private parties to provide a financial contribution," the Department may "rely on circumstantial information to determine that there was entrustment or direction."[142] In such a situation, following Department precedent, we employ a two-part test examining the relevant policy and practices of the foreign government.[143] Specifically, the Department looks to: (1) whether the government has in place during the relevant period a governmental policy to support the respondent(s); and (2) whether evidence on the record establishes a pattern of practices on the part of the government to act upon that policy to entrust or direct the associated private entity decisions.[144]

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[139] *See* Volume I of the Petition at CVD-ARG-05 at 4.
[140] *See* section 771(5)(B)(iii) of the Act. This requirement has been broadly interpreted to mean that the financial contribution entrusted or directed by the government must be "what might otherwise be a governmental subsidy function of the type listed in subparagraphs (i) to (iv) of section 1677(5)(D)." *See DRAMs from Korea*.
[141] *See SAA* at 926.
[142] *See Supercalendered Paper from Canada: Final Affirmative Countervailing Duty Determination*, 80 FR 63535 (October 20, 2015) (*Supercalendered Paper*), and accompanying Issues and Decision Memorandum (IDM) at 125 (citing *DRAMs from Korea*, and accompanying IDM at 49).
[143] *See DRAMs from Korea*, and accompanying IDM at 49. The CIT affirmed the Department's approach in *Hynix Semiconductor, Inc. v. United States*, 391 F. Supp. 2d 1337 (CIT 2005), *aff'd after remand* 425 F. Supp. 2d 1287 (CIT 2006).
[144] *Id*.

To analyze whether the soybean producers have been entrusted or directed to provide a financial contribution within the meaning of section 771(5)(D)(iii) of the Act, we must examine the pertinent GOA laws and regulations. As described above, the GOA's export tax is a regulatory, non-discretionary system established in December 1994 by Presidential Decree 2275/94.[145] The export tax rate in effect during the POI took effect in December 2015 with Executive Order No. 133/2015: Export Duty Rate.[146] We note that the GOA has stated that it considers that "export duties are a valid development tool, since they enable many developing countries to cease being mere suppliers of raw materials."[147] Thus, the GOA has described the export tax system as a development tool, specifically, to help insulate domestic value-added producers from rising world prices. Currently, the only value added producers who consume crop commodities that are subject to export taxes value-added producers of soybean based products such as biodiesel producers.[148]

The existence of a policy to support production of biodiesel and other domestic processing industries through the guaranteed supply of primary commodities and inputs at below market prices is evident from the GOA's explanation of its export tax regime to the Trade Policy Review Board of the World Trade Organization. As noted above, the GOA has stated clearly that "export duties are a valid development tool, since they enable many developing countries to cease being mere suppliers of raw materials."[149] Moreover, the GOA has repeatedly stated that the intention of its adjustments to the export tax on soybeans was to reduce domestic soybean prices in the context of rising world market prices.[150] In this way, the export tax provides an incentive for the development of domestic manufacturing or processing industries with higher value-added exports. Moreover, the GOA's multiple revisions to the export tax on soybeans provides an indication that the GOA is cognizant of the relative price of soybeans available within Argentina vis-à-vis those on the world market. By contrast, the export tax on biodiesel ranged from 3.96 to 5.04 percent during the POI.[151] The effect on soybean prices paid by the respondents is not incidental to, but a direct result of, a system designed by the GOA to ensure the availability of relatively low-priced soybeans for domestic processing industries, notably the biodiesel industry.

There is a discernible benefit linked to this policy, demonstrated clearly by a comparison of the "differential" between Argentine and world market prices for soybeans. The prices discussed above, compiled from data submitted by both the petitioner and the GOA, demonstrate the

[145] *See SAA* at Article 1
[146] *Id*. at Exhibit CVD-GOA-29.
[147] *See* World Trade Organization, "Trade Policy Review Report by the Secretariat: Argentina (Revision)," WT/TPR/S/277/Rev.1 (14 June2013) at Volume I of the Petition at CVD-ARG-08).
[148] *See* Volume I of the Petition at CVD-ARG-05 at 4.
[149] *See* World Trade Organization, "Trade Policy Review Report by the Secretariat: Argentina (Revision)," WT/TPR/S/277/Rev.1 (14 June2013) at Volume I of the Petition at CVD-ARG-08).
[150] *See GOA* June 30, 2017 IQR at Exhibits CVD-GOA-11, 12, 13, and 17-19.
[151] *See* Volume I of the Petition at CVD-ARG-05-at 4.

necessary linkage between the application of the export tax and the extent of the price differential, lowering the price of soybeans consumed domestically by Argentine biodiesel producers. [152]

Furthermore, the record establishes a pattern of practices on the part of the government to act upon the above described policy to entrust or direct the provision of soybeans. The export tax on soybeans was introduced in 1994, and was amended several times until the implementation of the current export tax.[153] Each time the GOA revised the export tax, it stated its intention of reducing domestic prices in the context of rising world market prices.[154] The pervasiveness of the effects of the export tax in lowering soybean prices is described above. [155] Most notably, in all twelve months of the POI, Argentine soybean prices were below world prices by more than $100 per metric ton, and in ten months of the POI, the difference ranged from $140 to $165 per metric ton.[156] The GOA's frequent revisions of the export tax over the years shows a pattern of practices in terms of the GOA entrusting and directing soybean producers to provide soybeans.

Therefore, the Department preliminarily finds that the GOA entrusts or directs private parties to provide soybeans to processing industries, including the biodiesel industry, within the meaning of section 771(5)(B)(iii) of the Act. Specifically, through the use of an export tax, the GOA encourages soybean producers to provide their products to processing industries at prices below world market prices.

Section 771(5)(B)(iii) of the Act also requires that the provision of a financial contribution by a private entity would normally be vested in the government and not differ in substance from practices normally followed by governments. The provision of a good is defined as a financial contribution under section 771(5)(D)(iii) of the Act. Therefore, the provision of a good, including soybeans, is a type of financial contribution normally vested in the government, and the provision of goods does not differ in substance from the practices normally followed by governments.

Accordingly, this program confers a financial contribution, pursuant to sections 771(5)(B)(iii) and 771(5)(D)(iii) of the Act, to the Argentine biodiesel industry.

The GOA lists four industries that use soybeans, including the biodiesel, fuel, balanced meal, and mill industries.[157] Thus, the Department preliminarily finds this program to be *de facto* specific within the meaning of section 771(5A)(D)(iii)(I) of the Act, as the benefits conferred from this program are available only to a limited number of enterprises and industries. The Department

[152] A complete year-by-year series demonstrating the difference between the soybean prices in Argentina and world market prices from 1994 through 2016 are found in Volume I of the Petition at CVD-ARG-21.
[153] *See* GOA June 30, 2017 IQR at 27-28.
[154] *See* GOA June 30, 2017 IQR at Exhibits CVD-GOA-11, 12, 13, and 17-19.
[155] *See* Volume I of the Petition at CVD-ARG-21.
[156] *See* LDC Argentina and Vicentin Calculation Memoranda.
[157] *See* GOA IQR at 22.

also finds that the provision of soybeans for LTAR confers a benefit to the Argentine biodiesel industry, pursuant to section 771(5)(E)(iv) of the Act and 19 CFR 351.511(a)(1), namely the difference between the benchmark world price of soybeans as described below and the domestic purchases of soybeans as reported by the respondents.

With regard to benefit, under 19 CFR 351.511(a)(2), the Department measures the remuneration received by government for goods or services against comparable benchmark prices to determine whether the government provided goods or services for LTAR. These potential benchmarks are listed in hierarchical order by preference: (1) market prices from actual transactions within the country under investigation (*e.g.*, actual sales, actual imports, or competitively run government auctions) (tier one); (2) world market prices that would be available to purchasers in the country under investigation (tier two); or (3) an assessment of whether the government price is consistent with market principles (tier three). As provided by our regulations, the preferred benchmark in the hierarchy is an observed market price from actual transactions within the country under investigation (*i.e.*, tier one). This is because such prices generally would be expected to reflect most closely the prevailing market conditions of the purchaser under investigation.

Notwithstanding the regulatory preference for the use of prices stemming from actual transactions in the country, where it is reasonable to conclude that actual transaction prices are significantly distorted as a result of the government's involvement in the market, we will resort to the next alternative in the hierarchy.[158]

As noted above, the GOA has revised the export tax on soybeans at least five times since 1994. Each time, the GOA stated its intention of reducing domestic prices in the context of rising world market prices.[159] The distortive effects of the export tax in lowering soybean prices prior to[160] and during the POI is notable. As described above, Argentine soybean prices were more than $100 per metric ton below world market prices- with the difference ranging from $140 to $165 per metric ton for ten months.[161] For the reasons discussed above, the Department finds that there is reason to believe that prices for sales of domestically produced soybeans are distorted and, thus, the use of a benchmark constructed by transactions in Argentina as outlined in 19 CFR 351.511(a)(2)(i) is precluded. Additionally, soybean import data on the record are not useable for purposes of establishing a benchmark because import prices are considered tier 1 prices and, hence, suffer from the distortion caused by the export tax on soybeans.[162] Thus, import prices are not suitable for use as a benchmark.

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[158] *See CVD Preamble*, 63 FR at 65377.
[159] *See* GOA June 30, 2017 IQR at 27-28.
[160] *See* Volume I of the Petition at CVD-ARG-21.
[161] *See* LDC Argentina and Vicentin Preliminary Calculation Memoranda.
[162] As noted above, pursuant to 19 CFR 351.511(a)(2)(i) market prices from actual transactions within the country under investigation (*e.g.*, actual sales, actual imports, or competitively run government auctions) are considered tier one benchmarks.

Because there are no available tier one data on the record, the Department is using an external benchmark, as described below, to determine the benefit of this program in accordance with 19 CFR 351.511(a)(2)(ii). The petitioner placed an annual CIF Rotterdam price on the record.[163] In general, the Department's practice is to use monthly benchmark data. The GOA and Vicentin each placed on the record monthly FOB U.S. Gulf of Mexico prices during the POI for soybeans from the GOA's Ministry of Agribusiness.[164] The GOA stated that the source was "Reuters and data provided by the Buenos Aires Grain Exchange published by the Ministry of Agribusiness. Vicentin reported that the source was "Ministry of Agribusiness and Reuters." Each party provided a GOA website where the data were to be located but we were unable to locate these data at either website.[165] No party submitted international freight costs for soybeans.

As noted above, concurrent with this preliminary determination, the Department placed monthly CIF Rotterdam prices for soybeans and 2016 ocean freight quotes (Rotterdam to Buenos Aires) from Maersk Lines on the record.[166] We have used these data for this preliminary determination.

As discussed in each company's calculation memorandum, pursuant to 19 CFR 351.511(a), we adjusted the soybean benchmark for international freight, Argentine duty and value-added tax (VAT) applicable to soybeans.[167] We then compared these monthly benchmark prices to each respondent's reported purchase prices for individual domestic transactions, including VAT and delivery charges. Based on this comparison, we preliminarily determine that soybeans were provided for LTAR and that a benefit exists for each respondent in the amount of the difference between the benchmark prices and the prices paid by the respondent. We divided the total benefits received by Vicentin by its total sales.[168] We divided the total benefits received by LDC Argentina by its total sales. Finally, we divided the total benefits received by LDC Semillas by the sum of its and LDC Argentina's total sales, less intercompany sales.[169]

On this basis, we preliminarily determine a countervailable *ad valorem* subsidy rate of 54.02 percent for Vicentin and 50.09 percent for LDC Argentina.

2. Preferential Lending and Export Financing Provided by Banco de la Nacion Argentina (BNA)

The BNA is a government-owned special purpose bank, governed by the provisions of the Law on Financial Institutions. According to its charter, Law No. 21,799, as amended, its purpose and policy objectives are to provide financial assistance to micro, small, and medium enterprises

[163] *See* Volume I of the Petition at 26.
[164] *See* GOA June 30, 2017 IQR at Exhibit 36 and Vicentin August 3, 2017 at Exhibit 20.
[165] *See* Vicentin Preliminary Calculation Memorandum.
[166] *See* LDC Argentina Preliminary Calculation Memorandum at Attachment III.
[167] *See* GOA IQR at 20.
[168] *See* Vicentin Preliminary Calculation Memorandum.
[169] *See* LDC Argentina Preliminary Calculation Memorandum.

(MSMEs), to support agricultural and livestock production through all steps of commercialization, the establishment and settlement of rural producers, and to promote and support foreign trade and encourage exports, etc.[170] The Department has previously countervailed this program.[171]

The GOA stated that the BNA granted respondents Vicentin and Los Amores the following lines of credit during the POI: (1) export financing prior to shipment (export-pre-financing) in U.S. dollars; (2) investment financing for productive activities for MSMEs (regulation 400); (3) special conditions for MSMEs in the framework of the financing program for the enlargement and renovation of fleet tranche II-decrees 494, 1666/2012 and resolution 466/14 (regulation 400-43); (4) regulation 400-53 -special conditions for the production of livestock and meat; (5) working capital and investment (regulation no. 43 A); (6) investment financing for value added at source-tranche III (regulation 400-56); and (7) financing in foreign currency to MSMEs (regulation 510).[172] Vicentin reported participating in the export-pre-financing in U.S. dollars, and Los Amores reported participating in BNA regulation 510 credit in foreign currency. In addition, Los Amores reported receiving BNA loans under Regulation 400-56[173]

As stated above, the BNA is a GOA bank that is created and operated under the laws of Argentina.[174] The Charter of BNA is incorporated by Law No. 21,799, and it sets out the government's policy objectives for the bank, one of which includes promotion of exports of Argentine goods.[175] The GOA effectively manages the BNA on a day-to-day basis through its authority to appoint all members of the board, including the President and Vice President.[176] The BNA is authorized to set terms and conditions of financial products, including interest rates.[177] In addition, the President of the BNA is primarily vested with authority over the bank's staffing.[178] Accordingly, the BNA is an "authority" under section 771(5)(B) of the Act.

(a) *Export Pre-Financing*

BNA export pre-financing is a credit line that finances different stages of the production and commercialization process for the export of goods. To receive credit under this program, respondent has to demonstrate that the financing is applied to the different stages of the

[170] *See* GOA June 30, 2017 IQR at Exhibit 68.
[171] *See Final Affirmative Countervailing Duty Determination: Honey from Argentina*, 66 FR 50613 (October 4, 2001) (*Honey Final Determination*), and accompanying Issues and Decision Memorandum (IDM) at BNA Pre-Financing of Exports Regime for the Agriculture Sector.
[172] *Id*.
[173] *See* Vicentin June 30, 2017 IQR at 19 and Vicentin-Los Amores June 30, 2017 IQR, at 11.
[174] *See* GOA June 30, 2017 IQR at 100.
[175] *Id*. at Exhibit 68.
[176] *Id*. at 101.
[177] *Id*. at 102.
[178] *Id*. at 101.

production and commercialization process for the export of the good. BNA export pre-financing constitutes a financial contribution in the form of a direct transfer of funds through the provision of a loan, pursuant to section 771(5)(D)(i) of the Act.[179] While the GOA states that these are the only BNA credit lines specifically directed to support direct inputs for biodiesel production, the supporting documentation identifies them to be export programs rather than export of biodiesel programs.[180] Because financing is obtained contingent upon export performance, BNA export pre-financing is specific within the meaning of section 771(5A)(B) of the Act.

The benefit conferred by the export pre-financing program is the difference between the amount of interest the company paid on the government loan and the amount of interest it would have paid on a comparable commercial loan (*i.e.*, the short-term benchmark). To determine the benefit for the loans received by the respondent, we applied our standard short-term loan methodology. To arrive at the benefit, we calculated the interest amount that would have been due by multiplying the outstanding principal balance by the appropriate short-term loan benchmark for the number of days of Vicentin's reported interest payments for that loan, and subtracted the latter from the interest payments due. Finally, we converted the sum of the benefit from U.S. dollars into Argentine pesos. We then divided the sum of the benefits by the total value of Vicentin's exports, to derive a subsidy rate of 0.14 percent for Vicentin.

For the benchmark used, *see* the Loan Benchmarks section above.

(b) *Financing in Foreign Currency to Micro, Small and Medium Enterprises (MSMEs) (Regulation 510) (Financing in Foreign Currency to MSMEs)*

The BNA provides financing to MSMEs for investments and working capital for financing of sales of goods or services for export. The MSMEs must comply with the conditions set forth in BNA Regulation 510. The financing to MSMEs of sales of goods for export under BNA Regulation 510 in foreign currency constitutes a financial contribution in the form of a direct transfer of funds, pursuant to section 771(5)(D)(i) of the Act. While the GOA states that these are the only BNA credit lines specifically directed to support direct inputs for biodiesel production, the supporting documentation identifies them to be export programs.[181] Further, the financing to MSMEs in foreign currency of sales of goods for export under BNA Regulation 510 is specific within the meaning of section 771(5A)(B) of the Act because it is contingent upon export performance. There is a benefit to the extent that the interest rates on these loans are lower than the interest rates on comparable commercial loans, in accordance with section 771(5)(E)(ii) of the Act.

[179] *See Honey Final Determination,* IDM at BNA Pre-Financing of Exports Regime for the Agriculture Sector.
[180] *Id*. at 113 and Exhibits 61-62.
[181] *Id*. at 113 and Exhibits 61-62.

The benefit conferred under BNA Regulation 510 is the difference between the amount of interest the company paid on the government loan and the amount of interest it would have paid on a comparable commercial loan (*i.e.*, the short-term benchmark). To determine the benefit for those loans that were provided, we applied our standard short-term loan methodology. To calculate the benefit for this program, we multiplied the difference between the appropriate short-term benchmark, *see* Loan Benchmarks section above, and the interest rate reported for that loan by the principal outstanding. We then multiplied the interest amount calculated by the term of the loan, divided by 360 days. Finally, we summed all benefits for each of these loans to arrive at the total program benefit for that company. Finally, we converted the sum of the benefit from U.S. dollars into Argentine pesos.

For the short-term benchmark used, *see* the Loan Benchmarks section above. We then divided the sum of the benefits by the total value of Vicentin's and Los Amores' export sales, and determined that there was no measurable benefit for this program.

(c) *Investment Financing for Productive Activities for Micro, Small, and Medium Enterprises (Regulation 400)*

The BNA also provides financing to MSMEs for the acquisition of new or used capital assets of national or foreign origin, the installation and/or assembly and accessories necessary for startup investments. This may also include the cost of electricity optimization projects and the acquisition of modern illumination systems for the workplace, and other investments of foreign sources. This BNA sub-program also provides for the working capital associated with investment projects of up to twenty percent of the total value of the project.[182] The MSMEs must comply with the conditions for eligibility and investment levels set forth in BNA Regulation 400.

The GOA and Los Amores reported that Los Amores obtained financing through BNA Regulation 400-53, which regulates "Special Conditions for the Production of Livestock and Meat."[183] The financing to MSMEs for the acquisition of new or additional capital assets for productive investments in Argentina under BNA Regulation 400 in Argentine pesos constitutes a financial contribution in the form of a direct transfer of funds, pursuant to section 771(5)(D)(i) of the Act. Further, the investment financing for productive activities program to MSMEs under BNA Regulation 400 is specific within the meaning of section 771(5A)(D)(i) of the Act, because it is only available to a specific number of enterprises qualifying by size. There is a benefit to the extent that the interest rates on these long-term loans are lower than the interest rates on comparable commercial long-term loans, in accordance with section 771(5)(E)(ii) of the Act.

The benefit conferred by the investment financing for productive activities for MSMEs program is the difference between the amount of interest the company paid on the government loan and the amount of interest it would have paid on a comparable commercial loan (*i.e.*, the long-term

[182] *See* GOA June 30, 2017 IQR at 107-109 and Exhibit 60.
[183] *See* GOA August 10, 2017 SQR at 28-29 and Vicentin-Los Amores June 30, 2017 IQR, at 11.

benchmark). To determine the benefit for those loans that were provided, we applied our standard loan methodology. We multiplied the difference between the actual interest rate and the benchmark interest rate by the loan principal amount, and subtracted the interest paid for that loan.

For the long-term loan benchmark used, *see* the Loan Benchmarks section above. We then divided the sum of the benefits by the total value of Vicentin's and Los Amores' combined total sales, net of inter-company sales, to derive a subsidy rate of 0.01 percent *ad valorem* for Vicentin.

Provincial/Municipal Programs

1. Real Estate Exemption Under the Santa Fe Industrial Law: Exemption from Paying Real Estate Tax Under Provincial Law No. 8,478/1979 (Article 4) of Industrial Promotion

The Provincial Law No. 8,478, dated August 31, 1979, is regulated by Decree No. 3,461/95 (formerly, Decree 3,856/79). The Provincial Law 8,478 establishes an industrial promotion system to promote economic and social development throughout the Province of Santa Fe (PoSF). Within this industrial promotion framework, the PoSF supports industrial investments aimed at improving the efficiency of the industry, and to develop strategic industries for the national and/or provincial economy. The goal is to promote the economic and industrial investment to less developed areas with high unemployment and low economic growth rates.[184] An annual Exemption Certificate (C.E.A.) has to be granted by the Implementing Authority on an annual basis for the company to receive benefits.[185]

Provincial Law 8,478/1979 (Article 4) offers the following five benefits: (1) exemption, reduction and/or deferral of provincial taxes for specific periods up to a maximum term of 10 years; (2) sale, lease or donation, at a promotional price, of goods pertaining to the public or private domain of the Province; (3) expropriation of properties to facilitate the installation and/or expansion of industrial Areas and competitiveness clusters; (4) construction of basic infrastructure for the conditioning of Industrial Areas and Competitiveness Clusters; and (5) concession of medium- and long-term loans with interest rates granted in preferential conditions.[186]

The first benefit, *exemption, reduction and/or deferral of provincial taxes*, can be applied to: (a) turnover tax applied to revenues from whole sales as well as from retail sales; (b) real estate tax for properties associated with the promoted activity and owned by the company; (c) stamp tax, over the amount corresponding to any acts, contracts and transactions connected to the promoted

[184] *See* GOA August 10, 2017 SQR at 35-36.
[185] *Id.* at 38.
[186] *Id.* at 36.

activity; (d) single license plate tax on vehicles owned by the company and located in the province of Santa Fe; and (e) services fee, over the constitution, capital increase, and modifications of the social entity.[187]

The GOA and Vicentin reported that Vicentin's cross-owned affiliate, San Lorenzo, was exempted from paying real estate tax under this economic and industrial promotion scheme. Specifically, based on Joint Resolution 57 of the Ministry of the Economy of Santa Fe and Resolution 648 of the Ministry of Production of Santa Fe, dated November 9, 2012, San Lorenzo was granted an exemption for all taxes for one year and an exemption from real estate taxes for 8 years in return for its investment in productive assets and the provision of employment in that specific region. The GOA notes that San Lorenzo only received benefits related to real estate taxes during the POI.[188]

We preliminarily determine that the real estate tax exemption used by San Lorenzo confers a countervailable subsidy. Specifically, we find that this sub-program provides a financial contribution in the form of revenue foregone by the PoSF pursuant to section 771(5)(D)(ii) of the Act, and confers a benefit equal to the amount of the tax exemption, pursuant to section 771(5)(E) of the Act. Pursuant to section 771(5A)(A) and (D)(iv) of the Act, this sub-program is specific because it is limited to certain geographic regions within the PoSF.

To calculate the countervailable subsidy rate, we divided San Lorenzo's benefit, as reported by Vicentin, by the combined total sales of Vicentin and San Lorenzo, net of inter-company sales, and determined that there is no measurable benefit for this program.

2. Province of Santiago del Estero System of Promotion and Industrial Development (PSPID) – Provincial Law No. 6,750:

In 2005, the Province of Santiago del Estero implemented with Law 6,750 a provincial system for industrial promotion and development to foster new industries within the province and to expand existing ones. This program is regulated through Decree 1133/05, and implemented by the Ministry of Production, Natural Resources, Forestry and Lands. The program is applicable to diverse industrial sectors, such as agriculture, tourism, construction, and mining.[189] To be eligible, the applicant must submit a comprehensive agro-industrial project for approval to the Ministry of Production, Natural Resources, Forestry and Land, as outlined in Decree 1133/05, Title III, Article 3.[190] As noted by Vicentin, eligibility is contingent "on the foregoing geographical and industrial considerations."[191]

[187] *Id*. at 37.
[188] *Id*. at 38-39. *See* Vicentin June 30, 2017 IQR at 36-37 and Exhibit V.61, and Vicentin August 3, 2017 SQR. at 34-39.
[189] *See G*OA August 10, 2017 SQR at 50.
[190] *Id*. at 53 and Exhibit S1-117, and Vicentin August 3, 2017 SQR at 38.
[191] *See* Vicentin August 3, 2017 SQR at 37.

According to the same decree, as outlined in Title IV, Article 5, there are eight Promotional Benefits available:

> (1) Refund of up to thirty percent of the investment made, not to exceed five years; (2) refund of up to fifty percent or tax credit for the purposes of the payment of future taxes for investments in roads, electricity networks,…,executed by the companies associated with the projects; (3) exemption of provincial taxes, current or to be generated, on a full or gradual basis; (4) facilities for the purchase, location or commodatum agreement with purchase option within the period of five years and leasing of personal and real estate property of the provincial State; (5) Provision of administrative, technological, and financial assistance, and technical advisory services by State Organizations; (6) support and state participation in the management of exemptions and tax and tariff reductions, promotions or protection measures and other tax exemptions (zero duties) in the national or municipal order; (7) subsidies of up to fifty percent of interest rate of the credit line for promoted companies in accordance to the terms set forth; and (8) award of investment promotion loans.[192]

Vicentin's cross-owned affiliate, Los Amores, reported benefitting from this program.[193] The GOA reported that, pursuant to Decree No. 2160/12, the implementing authority approved a comprehensive agro-industrial project of a gin and processing plant for Los Amores. Based on the content of Decree No. 2160, Los Amores was entitled to option 1, *Refund of up to Thirty Percent of the Investment*, option 3, *exemption of provincial taxes* (here, 10-Year Exemption from Turnover Tax), and option 7, *Subsidies of up to Fifty Percent of Interest Rate of the Credit Line*.[194]

We preliminarily determine that the sub-program used by Los Amores confer countervailable subsidies. Specifically, we find that the PSPID E*xemption of Provincial Taxes* sub-program used by Los Amores (*i.e.*, a 10-Year Exemption from Turnover Tax), provides a financial contribution in the form of revenue foregone by the Province of Santiago del Estero, pursuant to section 771(5)(D)(ii) of the Act.

The amount of benefits received by Los Amores is equal to the amount of taxes that would have been due absent this program, per 19 CFR 351.510(a). Because Vicentin did not provide any benefit information on this program, we applied AFA to determine a countervailing duty rate for Vicentin under this program. Therefore, as AFA, we determine a countervailing duty rate of 10 percent *ad valorem,* which is the highest rate calculated for a tax program in another proceeding concerning Argentina. For more information, please *see* the "Use of Facts Available and Adverse Facts Available" section above. As AFA, as discussed above in the "Use Facts

[192] *Id.* at Exhibit S1-117.
[193] *Id.* at 52-53.
[194] *See* GOA August 10, 2017 SQR at Exhibits S1-116 and 117, and Vicentin August 3, 2017 SQR at 39-40.

Available and Adverse Facts Available" section, we determine that this program is specific within the meaning of section 771(5A) of the Act.

3. Municipal Tax or Fee Agreements (General Lagos "Derecho de Registro e Inspección") (DReI) "Convenio," Ordinance No. 26/2016

As explained below, the Department preliminarily finds LDC Argentina's agreement (Convenio) regarding the "Derecho de Registro e Inspección" (Registration and Inspection Fee or DReI) tax to be countervailable.

The DReI is a Municipal Ordinance "designed to compensate the municipality for services such as business registration, providing basic security and hygiene, inspecting utility installations, supervising and inspecting other commercial installations providing for benches in public parks, etc."[195] Title III of Municipal Ordinance No. 2/2016, in effect during the POI,[196] establishes that a company's total gross revenue would be taxed at a rate of 0.6 percent (or 0.5 percent for all activity related to cereals, grains, and seed oils) for 2016.[197] LDC Argentina made an alternative fee agreement,[198] or "Convenio," with the Municipal Government of General Lagos,[199] published as Ordinance 26/2016.[200] The Convenio established monthly lump sum payments from LDC Argentina to the General Lagos municipality, beginning in February 2016.[201]

LDC Argentina argues that Convenios should not be considered countervailable subsidies.[202] However, as demonstrated by record evidence, the DReI Convenio with the Municipal Government of General Lagos is specific, constitutes a financial contribution, and provides a benefit within the meaning of sections 771(5A)(D), 771(5)(D), and 771(5)(E) of the Act, respectively.

Information on the record shows that the DReI Convenio made between LDC Argentina and the Municipal Government of General Lagos is specific to LDC Argentina. LDC Argentina states Convenios are "typically accepted in order to avoid litigation, and as part of the company's 'good neighbor' policy in the local community." LDC Argentina does not point to a provision within Ordinance 2/2016 that permits alternative arrangements to be made, nor does it provide further supporting evidence that this is a common practice for businesses in General Lagos. The GOA states that Article 11 of Ordinance 2/2016 permits "alternative arrangements."[203]

[195] *See* GOA August 10, 2017 SQR at 101.
[196] *Id.* at 101.
[197] *See* GOA August 10, 2017 SQR at 101, Exhibit CVD-GOA-113 at Article 17-19.
[198] *See* LDC Argentina IQR June 29, 2017 at 15, Exhibit A23.
[199] *See* GOA August 10, 2017 SQR at 101. *See* LDC Argentina June 29, 2017 IQR at 15.
[200] *Id*. at 101.
[201] The terms of the Convenio are publicly-available on the website for Municipal Government of General Lagos, as indicated by the GOA. *See* GOA August 10, 2017 SQR at 104; LDC Argentina Preliminary Calculation Memorandum at Attachment VII.
[202] *See* LDC Argentina June 29, 2017 IQR at 14.
[203] *See* GOA August 10, 2017 SQR at 101.

However, Article 11 makes no explicit provisions for alternative arrangements, nor does Ordinance 2/2016 provide any guidelines for a company to make such an arrangement. Further, information on the record indicates that the Municipal Government of General Lagos did not make any "Convenios" with other companies in the municipality.[204]

Accordingly, the agreement is specific within the meaning of 771(5A)(D)(i). Further, the program provides a financial contribution within the meaning of 771(5)(D)(ii) in the amount of the revenue foregone to the Municipal Government of General Lagos.

The benefit conferred, pursuant to section 771(5)(E) of the Act, is the difference between the amount of taxes LDC Argentina would have paid pursuant to the Municipal Ordinance No. 2/2016 (*i.e.*, 0.6 percent of its total gross revenue) and the total taxes it paid according to the DReI Convenio. In order to calculate the subsidy rate, the Department relied on LDC Argentina's total sales for 2016 as the denominator. On this basis, we preliminarily determined the net countervailable subsidy from the General Lagos DReI Convenio for LDC Argentina to be 0.06 percent *ad valorem* during the POI.

4. Percentage Tax Rate Reduction Pursuant to "Pacto Fiscal" (Decree 14/1994)

As explained below, the Department preliminarily finds the tax exemptions pursuant to "Pacto Fiscal" to be countervailable. "Pacto Fiscal" is a revenue sharing agreement[205] approved by National Decree number 14/94[206] that, in part, provides for gross income tax exemptions on activities related to the "production of goods (manufacturing industry), with the exception of revenues for end-consumer sales that shall have the same treatment as the retail sector."[207]

The petitioner alleges that the exemptions to provincial tax pursuant to "Pacto Fiscal" provide a financial contribution in the form of revenue foregone, pursuant to section 771(5)(D)(ii) of the Act and are *de jure* specific pursuant to section 771(5A)(D)(i) of the Act because "Pacto Fiscal" limits the exemptions to certain specified activities and service sectors, including the production of intermediary products.[208]

The GOA, in its supplemental questionnaire response, stated that the "Pacto Fiscal" is a "framework agreement that does not have a direct legal effect within the jurisdiction of the Provinces nor is applied *ipso iure* {sic}"[209] and that "there is no financial contribution by the GOA nor a benefit thereby conferred to the companies."[210] However, as noted in the "Use of Facts Otherwise Available and Adverse Facts Available" section above, the GOA failed to

[204] The Municipal Government of General Lagos's website, provided by the GOA, lists no other "Convenios" for tax reductions. *See* LDC Argentina Preliminary Calculation Memorandum at Attachment VII.
[205] *See* LDC Argentina June 29, 2017 IQR at 14
[206] *See* GOA August 10, 2017 SQR at 100.
[207] *See* LDC Argentina June 29, 2017 IQR at 14, A21, Article 4.e.
[208] *See* Petitioner Letter, "New Subsidy Allegations," dated July 24, 2017 at 8.
[209] *See* GOA August 10, 2017 SQR at 100.
[210] *See* GOA August 10, 2017 SQR at 100.

provide necessary information regarding "Pacto Fiscal," and, thus, we have no basis for evaluating the program. Accordingly, we are preliminarily relying on AFA in determining that "Pacto Fiscal" tax reductions constitute a financial contribution within the meaning of section 771(5)(D) of the Act and are specific within the meaning of section 771(5A)(D)(i) of the Act.

In determining whether a benefit exists within the meaning of section 771(5)(E) of the Act, the Department is relying on LDC Argentina's statement that it utilized a reduced tax rate in order to calculate the taxes it remitted to the Province of Santa Fe.[211] Specifically, LDC Argentina stated that the applicable tax rate during the POI, pursuant to Santa Fe Provincial Law 12,692, was 1.5 percent.[212] However, it also provided copies of its internal spreadsheets demonstrating its monthly and cumulative savings, based on the preferential tax rate, which it tied to its annual tax liability statements.[213] Further details of the calculation of benefit rely on business proprietary information, and thus are confined to LDC Argentina's Preliminary Calculation Memorandum. We preliminarily determined a countervailable subsidy rate of 0.15 percent *ad valorem* for LDC Argentina.

B. Programs Preliminarily Found to be Not Countervailable

1. Article 179 Subsection C Santa Fe Tax Code (Formerly 127 Subsection C) Turnover Tax

The petitioner alleged that Santa Fe's Fiscal code provides exemptions for turnover tax on revenue earned on all export transactions, including sales to end-users.[214] Article 179 subsection c,[215] according to the petitioner's allegation, provides a financial contribution in the form of revenue foregone within the meaning of section 771(5)(D)(ii) of the Act, and is specific within the meaning of section 771(5A)(A) and (B) of the Act, because the benefits are contingent upon export performance.[216] Further, the petitioner alleges that a benefit exists within the meaning of 19 CFR 351.509(a)(1) in the amount of the foregone tax revenue.[217]

While Biodiesel exports are not subject to a turnover tax, the GOA and Vicentin provided evidence that biodiesel sold in the domestic market is subject to turnover tax rates, and thus, taxes are borne on the domestic like product.[218] Pursuant to 19 CFR 351.517(a), we have preliminarily determined that the amount of turnover tax that the government exempts on exports of biodiesel does not exceed that amount of turnover tax collected on domestic sales of biodiesel.

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[211] *See* LDC Argentina June 29, 2017 IQR at 14.
[212] *See* LDC Argentina August 2, 2017 SQR at 13.
[213] *See* LDC Argentina June 29, 2017 IQR at A21; LDC Argentina SQR August 1, 2017 at Exhibit Supp-13.
[214] *See Initiation Notice* and accompanying Initiation Checklist at 17.
[215] The Initiation Checklist incorrectly cites Article 235 as the current provision under which the turnover tax exemptions are permitted in the Santa Fe Fiscal Code. Based on information provided by the GOA, the current provision of the Santa Fe Fiscal Code that permits turnover tax exemptions is Article 179, subsection c, formerly Article 127, subsection c. *See Initiation Notice*, and accompanying Initiation Checklist at 17. *See* GOA June 30, 2017 IQR at 168, Exhibit CVD-GOA-81
[216] *See Initiation Notice*, and accompanying Initiation Checklist at 17.
[217] *See Initiation Notice*, and accompanying Initiation Checklist at 17.
[218] *See* GOA June 30, 2017 IQR at 190. *See* Vicentin June 30, 2017 IQR at 31.

Accordingly, the Department preliminarily finds that the Santa Fe Turnover Tax Exemption for Export Sales does not meet the criteria for countervailability.

C. Programs Preliminarily Found Not Used or Do Not Exist

GOA Programs

1. Accelerated Depreciation under Ley 26,093 for Biodiesel Producers
2. Accelerated Depreciation under Notice 30,581
3. Convergence Factor Program
4. Exemption & Deferral of the Minimum Preserved Income Tax (MPIT) under Ley 26,093 for Biodiesel Producers
5. GOA Mandated Purchase of Biodiesel for MTAR (Biodiesel Supply Agreement
6. Reintegro Program

Provincial Programs

1. 12,692/2006 (Santa Fe Biofuels Law (Real Estate Tax Exemption)
2. Article 236 Subsection 29 (Formerly Article 183.29) Santa Fe Stamp Tax Exemption
3. Provincial Tax Exemptions Provided by the Province of Buenos Aires
4. Provincial Tax Exemptions Provided by the Province of Cordoba
5. Provincial Tax Exemptions Provided by the Province of Santa Fe Law No.

X. CALCULATION OF ALL-OTHERS RATE

Sections 703(d) and 705(c)(5)(A) of the Act state that for companies not individually investigated, we will determine an all-others rate by weighting the individual company subsidy rate of each of the companies investigated by each company's exports of subject merchandise to the United States, excluding any zero, *de minimis*, or rates based entirely on facts available. In this investigation, the preliminary subsidy rates calculated for the two mandatory company respondents are above *de minimis* and neither was based entirely on facts otherwise available pursuant to section 776 of the Act. However, calculating the all-others rate by using the company respondents' actual weighted-average rates risks disclosure of proprietary information. Therefore, for this preliminary determination, we calculated the weighted-average all-others rate for non-selected companies using publicly-ranged information provided by Vicentin and LDC Argentina. Therefore, the all-others rate is 57.01 percent *ad valorem*.[219]

XI. ITC NOTIFICATION

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making all non-privileged and non-proprietary information relating to this

[219] *See* Memorandum, "Preliminary Determination Calculation for All-Others," dated concurrently with this preliminary decision memorandum.

investigation available to the ITC. We will allow the ITC access to all privileged and business information in our files, provided that the ITC confirms that it will not disclose such information, either publicly or under an APO, without the written consent of the Assistant Secretary for Enforcement and Compliance.

In accordance with section 705(b)(2) of the Act, if our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

XII. DISCLOSURE AND PUBLIC COMMENT

The Department intends to disclose to interested parties the calculations performed in connection with this preliminary determination within five days of its public announcement.[220] Case briefs may be submitted to Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) by no later than seven days after the date on which the last verification report is issued in this proceeding. Rebuttal briefs, limited to issues raised in the case briefs, may be submitted by no later than five days after the deadline for the submission of case briefs.

Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[221] This summary should be limited to five pages total, including footnotes.

Interested parties who wish to request a hearing must do so in writing within 30 days after the publication of this preliminary determination in the *Federal Register*.[222] Requests should contain the party's name, address, and telephone number; the number of participants; and a list of the issues to be discussed. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230, at a date, time and location to be determined. Parties will be notified of the date, time, and location of any hearing through ACCESS.

Parties must file their case and rebuttal briefs, and any requests for a hearing, electronically using ACCESS.[223] Electronically filed documents must be received successfully in their entirety by 5:00 p.m. Eastern Time, on the due dates established above.[224]

XIII. VERIFICATION

As provided in section 782(i)(1) of the Act, we intend to verify the factual information submitted in response to the Department's questionnaires.

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[220] *See* 19 CFR 351.224(b).
[221] *See* 19 CFR 351.309(c)(2) and 19 CFR 351.309(d)(2).
[222] *See* 19 CFR 351.310(c).
[223] *See* 19 CFR 351.303(b)(2)(i).
[224] *See* 19 CFR 351.303(b)(1).

XIV. CONCLUSION

We recommend approval of the preliminary findings described above.

☒	☐
Agree	Disagree

8/21/2017

X 

Signed by: GARY TAVERMAN

Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive function and duties of the
Assistant Secretary for Enforcement and Compliance